(16,939.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 108.

THE FARMERS' LOAN AND TRUST COMPANY, PLAINTIFF IN ERROR,

vs.

THE LAKE STREET ELEVATED RAILROAD COMPANY, THE AMERICAN TRUST AND SAVINGS BANK, AND THE NORTHERN TRUST COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Illinois, before you, between The Farmers' Loan & Trust Company, as appellant, and The Lake Street Elevated Railroad Company, The American Trust & Savings Bank, and The Northern Trust Company, as appellees, a manifest error hath happened, to the great damage of the said The Farmers' Loan & Trust Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 9th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
H. B. BROWN,
Associate Justice of the Sup. Court U. S.

July 7th, 1898.

b In the Supreme Court of Illinois.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE LAKE STREET ELEVATED RAILROAD Company, The American Trust and Savings Bank, and The Northern Trust Company.

Appeal from Appellate Court of Illinois, First District.

I, Christopher Mamer, clerk of the supreme court, elected in and for the northern grand division thereof, and keeper of the files and records thereof, do hereby certify that on the second (2nd) day of August, in the year of our Lord one thousand eight hundred and ninety-eight (A. D. 1898), a copy of the foregoing writ of error for

the defendant in error was lodged in my office at Springfield, Illinois.

Witness my hand and the seal of this court this second (2nd) day of August, in the year of our Lord one thousand eight hundred and ninety-eight (A. D. 1898).

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER.
Clerk of the Supreme Court.

[Two-cent U. S. internal-revenue stamp, canceled Aug. 2, 1898. C. M.]
[Two-cent U. S. internal-revenue stamp, canceled Aug. 2, 1898. C. M.]
[Two-cent U. S. internal-revenue stamp, canceled Aug. 2, 1898. C. M.]
[Two-cent U. S. internal-revenue stamp, canceled Aug. 2, 1898. C. M.]
[Two-cent U. S. internal-revenue stamp, canceled Aug. 2, 1898. C. M.]

c UNITED STATES OF AMERICA, *ss:*

To the Lake Street Elevated Railroad Company, the American Trust & Savings Bank, and the Northern Trust Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Farmers' Loan and Trust Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this 7th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

Received copy July 11th, 1898, at 4 o'clock p. m.

CLARENCE A. KNIGHT.
P. B.

Due service of the within citation is hereby acknowledged this 11th day of July, A. D. 1898.

THE LAKE STREET ELEVATED RAILROAD CO.,
By CLARENCE KNIGHT,
General Counsel for Trust Co.
LEVY MAYER,
For American Trust & Saving- Bank.
THE NORTHERN TRUST COMPANY,
By NOBLE B. JUDAH, *Its Counsel.*

d In the Supreme Court of Illinois.

THE FARMERS' LOAN AND TRUST Company *vs.* THE LAKE STREET ELEVATED Railroad Company, The American Trust and Savings Bank, and The Northern Trust Company.	Appeal from Appellate Court of Illinois, First District.

I, Christopher Mamer, clerk of the supreme court, elected in and for the northern grand division thereof, and keeper of the files and records thereof, do hereby certify that on the second (2nd) day of August, in the year of our Lord one thousand eight hundred and ninety-eight (A. D. 1898), a copy of the foregoing citation and return was lodged in my office at Springfield.

Witness my hand and the seal of this court this second day of August, in the year of our Lord one thousand eight hundred and ninety-eight (A. D. 1898).

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

[Two-cent U. S. internal-revenue stamp, canceled Aug. 2, 1898. C. M.]
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e In the Supreme Court of Illinois.

THE FARMERS' LOAN AND TRUST Company *vs.* THE LAKE STREET ELEVATED Railroad Company, The American Trust and Savings Bank, and The Northern Trust Company.	Appeal from Appellate Court of Illinois, First District.

I, Christopher Mamer, clerk of the supreme court, elected in and for the northern grand division thereof, and keeper of the files and records thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to 1122, inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office. Pages numbered 1123 to 1132, inclusive, include the errors assigned upon said record.

In testimony whereof I have hereunto set my hand and caused the seal of the said supreme court of Illinois to be hereunto affixed,

at Springfield, in said State, this second day of August, in the year of our Lord one thousand eight hundred and ninety-eight (A. D. 1898).

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

[Two-cent U. S. internal-revenue stamp, canceled Aug. 2, 1898. C. M.]
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[Two-cent U. S. internal-revenue stamp, canceled Aug. 2, 1898. C. M.]

1 At a supreme court begun and held at Ottawa, on Tuesday, the second day of March, in the year of our Lord one thousand eight hundred and ninety-seven, within and for the northern grand division of the State of Illinois.

Present: Benjamin D. Magruder, chief justice; Alfred M. Craig, justice; David J. Baker, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Edward C. Akin, attorney general; Charles J. Yockey, sheriff; Christopher Mamer, clerk.

Be it remembered that afterwards, to wit, on the 3rd day of March, A. D. 1897, there was filed in the office of the clerk of the supreme court of the northern grand division for the State of Illinois a certain transcript of record of the superior court of Cook county, together with a certified transcript of record of the appellate court of Illinois, first district, in a certain cause entitled—

THE FARMERS' LOAN AND TRUST COMPANY, Appellants,
vs.
THE LAKE STREET ELEVATED RAILROAD COMPANY, THE American Trust & Savings Bank, and The Northern Trust Company, Appellees.

Which said transcripts as so filed are in the words and figures following, to wit:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable John Barton Payne, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county, begun and holden at the courthouse, in the city of Chicago, in said county and State, on the first Monday, being the first day, of June, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twentieth.

Present: The Honorable John Barton Payne, judge of the superior court of Cook county; Jacob J. Kern, State's attorney; James Pease, sheriff of Cook county.

Attest: STEPHEN D. GRIFFIN, *Clerk.*

Be it remembered that heretofore, to wit, on the thirtieth day of January, in the year of our Lord one thousand eight hundred and ninety-six, there was filed in the office of the clerk of the superior court of Cook county a certain bill of complaint, which is in words and figures as follows, to wit:

3 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County, of the January Term, A. D. 1896.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant, *vs.* THE FARMERS' LOAN AND TRUST COMPANY ET AL., Defendants. } In Chancery.

To the honorable judges of the superior court of said Cook county, in chancery sitting:

Humbly complaining, your orator, The Lake Street Elevated Railroad Company, a corporation duly organized and existing under the laws of the State of Illinois, respectfully shows unto your honors that it is a corporation duly incorporated and existing under and by virtue of an act of the legislature of the State of Illinois providing for the incorporation of associations that may be organized for the purpose of constructing railways, maintaining and operating the same, and for prescribing and defining the duties and limiting the powers of such corporations when so organized, approved and in force March 1, 1872, as by the articles of incorporation of your orator, ready to be produced in court, will more fully and at large appear; that your orator was organized as such corporation in the month of August, 1892, with a capital stock of five million
4 dollars, divided into fifty thousand shares of one hundred dollars each, and that in the month of April, 1893, the capital stock of your orator was by due process of law increased to ten million dollars, and consisted of one hundred thousand shares of the par value of one hundred dollars each.

Your orator further shows unto your honors that on the 7th day of April, 1893, your orator made, executed, and afterwards delivered a certain mortgage or trust deed to the American Trust & Savings bank, a corporation duly organized and existing under the laws of the State of Illinois, as trustee, party of the second part, and the Farmers' Loan and Trust Company, a corporation duly organized and existing under the laws of the State of New York, as cotrustee, party of the third part, said parties of the second and third parts being designated in said mortgage or deed of trust as trustees, a copy of which said mortgage or deed of trust is hereto attached and marked Exhibit "A" and made a part hereof.

Your orator further shows unto your honors that after your orator made said mortgage, as aforesaid, the same was signed and accepted

by said American Trust & Savings bank and the trust therein on the 3rd day of May, 1893, and that the same was signed, executed, and acknowledged, and said The Farmers' Loan and Trust Company accepting the trust therein on the 5th day of May, 1893, and that said mortgage was afterwards filed for record in the recorder's office of Cook county, Illinois, on May 6th, 1893, and there recorded in Book 4256 of Records, at page 230, and was afterwards
5 filed for record in the office of the secretary of State of Illinois on May 11th, 1893, and there recorded in Book 12, at page 266.

Your orator further shows unto your honors that at the time said mortgage was so made, executed and delivered, and recorded said The Farmers' Loan and Trust Company, being such corporation under the laws of the State of New York, had not, nor prior thereto, nor has it since complied with the laws of the State of Illinois requiring the deposit with the auditor of public accounts for the benefit of the creditors of said company of the sum of two hundred thousand dollars in stocks of the United States or municipal bonds of this State (or in mortgages on improved and productive real estate of this State), being first liens thereon, and the real estate being worth at least twice the amount loaned thereon.

Your orator further shows unto your honors that at the time of the execution and delivery and acceptance of said trust under said mortgage your orator did not know that said The Farmers' Loan and Trust Company had not complied with the laws of the State of Illinois as to such deposit as aforesaid.

Your orator further shows unto your honors that since the acceptance of said trust by said The Farmers' Loan and Trust Company it has been doing business in the State of Illinois and in the city of Chicago, county of Cook aforesaid, without having made the deposit as required by the laws of the State of Illinois.

Your orator further shows unto your honors that under and by virtue of said mortgage or deed of trust said The Farmers' Loan and Trust Company, as aforesaid, has appointed one William
6 Burry as its agent to represent the said The Farmers' Loan and Trust Company as its agent to enforce the compliance on the part of your orator with the trusts reposed in it, the said The Farmers' Loan and Trust Company, under said mortgage or deed of trust; that said Burry, as such agent for and on behalf of said The Farmers' Loan and Trust Company, has acted and is still acting in the State of Illinois as its said agent and doing business therein under and by virtue of the authority claimed to be vested in said The Farmers' Loan and Trust Company under said mortgage or deed of trust.

Your orator further shows unto your honors that under and by virtue of said mortgage there was certified to and delivered by said The Farmers' Loan and Trust Company and the American Trust & Savings bank, trustees under the said mortgage, six thousand five hundred (6,500) bonds of one thousand dollars each, provided to be issued by said mortgage.

Your orator further shows unto your honors that after the said

trust companies had certified to said 6,500 bonds additional bonds were issued under said mortgage or deed of trust, under the provisions thereof providing for the issuing of bonds over and above said 6,500 bonds; that said additional issue of bonds so provided for were certified to by said The Farmers' Loan and Trust Company and delivered to your orator, and disposed of by your orator under the directions of said William Burry, as agent for said The Farmers' Loan and Trust Company, as provided under the terms and provisions of said mortgage.

Your orator further shows unto your honors that since the acceptance of said trust by said The Farmers' Loan and Trust Com-
7 pany the said company has transacted and done business through its said agent, William Burry, in connection with the trusts therein provided and accepted by it, and is still claiming the right and authority to do business by the execution and carrying out of the trusts assumed by it under the provisions of said trust deed or mortgage.

Your orator further shows unto your honors that since the making and execution of said mortgage or deed of trust your orator has built and is now operating a railroad beginning at Market and Madison streets, in the South division of the city of Chicago, thence along and upon Market street to Lake street, and thence west upon Lake street to West 52nd street, and from Market street eastwardly on East Lake street or Lake street to Wabash avenue; that said railroad so operated by your orator is operated exclusively for the transportation of passengers within the city of Chicago and over the route as aforesaid, and that the said railroad so operated is supported by rows of iron posts or columns, longitudinal and cross girders, and with railroad ties resting on such girders, and upon such ties tracks are laid over which the trains are operated, all being what is commonly known as an elevated railroad.

Your orator further shows unto your honors that it has been unable to earn sufficient money in operating its said railroad, as aforesaid, to pay the interest upon the bonded indebtedness secured by said mortgage or deed of trust, as aforesaid, but that notwithstanding such fact one William Ziegler, of New York city,
8 conspiring and confederating with various persons, and altogether representing 610 bonds of the total issue of 7,574 bonds, as aforesaid, made a demand upon said The Farmers' Loan and Trust Company and said The American Trust & Savings bank that they proceed to foreclose said mortgage and take possession thereof under and by virtue of the powers contained in said mortgage and the authority vested in said trustee, or to file a bill to foreclose such mortgage.

Your orator further shows unto your honors that your orator filed a bill in the circuit court of Cook county, Illinois, against said William Ziegler and others, enjoining them and each of them and said The Farmers' Loan and Trust Company and the American Trust & Savings bank from taking any action or proceeding to foreclose said mortgage under the request or demand made by said William Ziegler and others, representing 605 of said 610 bonds.

Your orator further shows unto your honors that it was informed by said William Burry, as agent for said The Farmers' Loan and Trust Company and representing it as its counsel and attorney, on the 27th day of January, A. D. 1896, that no other demand for action had been made upon said The Farmers' Loan and Trust Company than that made by said William Ziegler, as aforesaid, but that, notwithstanding that no other person was asking or demanding of said The Farmers' Loan and Trust Company any action or proceeding on behalf of the other bondholders than said 610 bonds, that it proposed to and would file a bill to foreclose the said mortgage for failure to pay the interest upon bonded indebtedness aforesaid.

9 Your orator further shows unto your honors that the interest upon all of its bonded indebtedness issued, as aforesaid, was paid up to the first day of January, 1895; that your orator was enabled to obtain an advancement or loan of sufficient money to pay the interest falling due upon January 1, 1895, to each party who would turn over the coupons as security for such advancement; that said January, 1895, interest has been paid by said Lake Street Company, with the exception of a balance of about — thousand dollars.

Your orator further shows unto your honors that notwithstanding the parties, persons, firms, or corporations holding or representing the coupons upon the bonds due on July 1, 1895, and January 1, 1896, have made no demand or request upon said The Farmers' Loan and Trust Company to take any action or proceeding, as aforesaid, other than said 610 bonds, yet said The Farmers' Loan and Trust Company, in violation of its duty and for the purpose of injuring and destroying the property and assets of your orator, intends to and will, unless restrained by this honorable court, proceed to take possession of or attempt to foreclose said mortgage or trust deed, as aforesaid.

Your orator further shows unto your honors that the holders of 6,574 bonds issued by your orator under said mortgage especially requested said The American Trust & Savings bank and said The Farmers' Loan and Trust Company to take no action whatsoever under said mortgage or trust deed with reference to the failure of said company to provide for or pay the interest upon the coupons due July 1, 1895, and January 1, 1896; and your orator

10 further states that said The American Trust & Savings bank in compliance with such request and after a full examination of the affairs of said company, did, on the 28th day of January, 1896, decline and refuse to join with said The Farmers' Loan and Trust Company in any proceedings whatsoever to enforce the provisions or conditions of said mortgage on account of the failure of your orator to pay the said interest as aforesaid.

Your orator further shows unto your honors that it is the desire and wish of the holders of over 6,500 of the bonds of your orator issued under and by virtue of said trust deed, as aforesaid, that said The Farmers' Loan and Trust Company should be removed from its position as trustee under said mortgage, first, for failure to com-

ply with the laws of the State of Illinois; and, second, for assuming to act or take proceedings under said mortgage, contrary to and in violation of the request of the holders of a majority of the bonds issued under said mortgage or deed of trust.

Forasmuch, therefore, as your orator is remediless in the premises, except in a court of equity, where matters of this kind are properly cognizable and relievable, your orator files this its bill of complaint, and makes The Farmers' Loan and Trust Company, The American Trust & Savings Bank, and The Northern Trust Company, the holder of over 6,500 bonds issued under said mortgage and a corporation under the laws of the State of Illinois, doing business in the city of Chicago, Cook county, Illinois, and all other holders of bonds issued by the Lake Street Elevated Railroad Company
11 under said mortgage or deed of trust, as aforesaid, parties defendant to this its bill of complaint, and prays:

1st. That a new trustee may be appointed by the court to act, under and by virtue of said mortgage or deed of trust attached hereto as Exhibit "A," in place and instead of said The Farmers' Loan and Trust Company.

2nd. That an injunction *pendente lite* may be issued restraining and enjoining said The Farmers' Loan and Trust Company from taking any proceedings or bringing or prosecuting any suit or suits or acting in any manner whatsoever under and by virtue of the terms, provisions, and conditions of said mortgage or deed of trust, and that upon the final hearing hereof said injunction may be made perpetual.

3rd. That your orator may have such other and further and different relief in the premises as equity may require and to your honors may seem meet.

May it please your honors to grant unto your orator a writ of summons in chancery, directed to said The Farmers' Loan and Trust Company, The American Trust & Savings Bank, and The Northern Trust Company, commanding them and each of them to appear before this honorable court on the first day of the next term thereof, to be held at the court-house, in the county of Cook aforesaid, then and there to answer this bill, etc.

And may it please your honors to grant unto your orator the people's writ of injunction immediately and without notice, to be directed to said The Farmers' Loan and Trust Company, its agents, attorneys, solicitors, and servants, restraining it and them and each of them, as hereinbefore prayed.

12 And your orator will ever pray, etc.

THE LAKE STREET ELEVATED
RAILROAD COMPANY,
By D. H. LOUDERBACK, *President.*

KNIGHT & BROWN,
Solicitors and of Counsel for Complainant.

13 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant, }
vs.
THE FARMERS' LOAN AND TRUST COMPANY ET AL., *Complainants.* }

STATE OF ILLINOIS, } ss:
County of Cook, }

D. H. Louderback, being first duly sworn, deposes and says that he is president of the above-named complainant in the above entitled cause, The Lake Street Elevated Railroad Company.

Affiant further states that he has read the attached and foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are therein stated to be upon information and belief, and as to such matters he believes it to be true.

Affiant further says that by reason of the matters and things set forth in said bill of complaint he states that the rights of the complainant will be unduly prejudiced if the injunction prayed in said bill of complaint be not issued immediately and without
14 notice to the defendants.

Affiant further states that if said injunction is not sued immediately and without notice that said The Farmers' Loan and Trust Company, without the concurrence and co-operation of said The American Trust & Savings bank, will file a bill to foreclose said mortgage or trust deed referred to in said bill of complaint, and that by so doing it will disorganize and injure the said The Lake Street Elevated Railroad Company in its rights and property to a great and irretrievable extent; that said The Farmers' Loan and Trust Company has no property or assets of any name, nature, or kind whatsoever within the State of Illinois which can be reached by execution or process of law to satisfy any claim for damages which the said The Lake Street Elevated Railroad Company might recover against said The Farmers' Loan and Trust Company for illegally filing such bill to foreclose said mortgage without authority or right whatsoever.

Wherefore and for the reasons set forth in said bill this affiant states that the rights of the complainant in this cause will be unduly prejudiced unless the injunction, as prayed for, is now issued immediately and without notice to the defendant The Farmers' Loan and Trust Company.

D. H. LOUDERBACK.

Subscribed and sworn to before me this 29th day of January, A. D. 1896.

[Seal of Frank J. Gatrell, Notary Public, Cook Co., Ills]

FRANK J. GATRELL,
Notary Public.

15 Let a writ of injunction issue, as prayed for in the within bill, upon the said complainant executing the usual injunction bond in the penal sum of five thousand dollars, with surety to be approved by the clerk of this court.

THEODORE BRENTANO.

N. F. S., *Master.*

Master's fees, $5.00, p'd by compl't.

16 EXHIBIT A.

Mortgage.

This indenture, made this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-three (A. D. 1893), between the Lake Street Elevated Railroad Company, a corporation duly organized and existing under the laws of the State of Illinois, hereinafter called the "railroad company," party of the first part, and the American Trust and Savings bank, a corporation duly organized and existing under the laws of the State of Illinois, as trustee, party of the second part, and the Farmers' Loan and Trust Company, a corporation duly organized and existing under the laws of the State of New York, as "cotrustee," party of the third part, said parties of the second and third parts being hereinafter, for convenience, called the "trustees."

Whereas, the railroad company is a corporation duly organized and existing under the laws of the State of Illinois, for the purpose of constructing, maintaining and operating a railroad from a point at or near the east end of Lake street, in the city of Chicago, county of Cook and State of Illinois, in a westerly direction upon or near said Lake street, and the extensions thereof, to the west line of said Cook county, together with such feeders, loops, switches and branch lines from such point or points in said Cook county as the board of directors of said company may deem advisable; and,

Whereas, the railroad company is engaged in the construction of a part of its main line of railroad lying within the said city of Chicago, and has acquired the right to construct, maintain and operate its railroad upon, along and across various streets and alleys, by virtue of various ordinances duly passed by the city council of said city of Chicago, and said railroad company is about to apply for and obtain permission of said city of Chicago to construct, maintain and operate branch lines of railroad leading from said main line of railroad; and,

Whereas, there is now existing against the railroad company a bonded indebtedness covered by a mortgage or deed of trust upon all its railroads and appurtenances and its property, real and personal, and the railroad company has contracted for the construction and equipment of all that part of its elevated railroad over the route which it has hitherto been authorized by ordinances as aforesaid to construct, maintain and operate; and,

Whereas, it is now necessary for the railroad company to issue its bonds and borrow money for the purpose of redeeming and cancelling said bonded indebtedness and for the purpose of constructing, completing, finishing, improving, operating and equipping its main line of railroad and appurtenances thereto, and also from time to time for the following purposes, viz:

(*a*) In adding to, extending and building additional railroad and branches of said railroad, and acquiring railroads by construction or otherwise at not exceeding eight hundred and fifty thousand dollars ($850,000.00) of bonds per mile for two-track road fully equipped with rolling stock, stations, switches, signal stations and necessary appurtenances.

(*b*) Paying, adjusting or settling claims or suits for damages arising out of the building or operation of said railroad or extensions or branches.

(*c*) Procuring right of way and such other real estate as may be needed by the railroad company in extending, adding to and building branches of said railroad.

(*d*) Paying any interest that may accrue and remain unpaid during the first two years of the operation of the railroad, provided to be constructed in said construction contract after delivery and acceptance of said railroad from the contractors for the same, after applying to the payment of such interest the net earnings of the railroad during the said two years.

(*e*) In case the railroad shall eventually cross the Chicago river, or either of its branches, upon its own bridge, not exceeding five hundred thousand dollars ($500,000.00) of bonds for each such bridge and its approaches.

And, whereas, the board of directors of the railroad company with the concurrence of more than two thirds of the amount of all the stock of the railroad company which has been duly expressed and recorded as required by law, has resolved to borrow money for said purposes, and issue and dispose of its mortgage bonds therefor, and secure the payment of these bonds so to be issued, with the interest thereon, by a first mortgage upon its corporate property and franchises, which shall be a first lien thereon and upon all the real and personal property, rights and franchises relating thereto, now owned and held by the said railroad company, or which may hereafter be owned by it.

And, whereas, the board of directors of the railroad company has further resolved, with the like concurrence as aforesaid, that the said bonds shall be executed and issued by the president and secretary of the railroad company under its corporate seal, and the interest warrants all authenticated by and with the name of the treasurer, that the said bonds shall be numbered consecutively from one upwards, each for the principal sum of one thousand dollars ($1,000.00) payable in gold coin of the United States of America of the present standard of weight and fineness, to the bearer or to the registered holder thereof, at the office of the American Trust and Savings bank, in the city of Chicago, or at the office of the Farmers' Loan and Trust Company, in the city of New York, on the first day

of July, A. D. 1928, with interest thereon at the rate of five per cent. per annum, payable in like coin semi-annually on the first days of January and July in each year, from January first, 1893, until said principal sum shall be fully paid, upon the presentation and surrender of the coupons annexed to said bonds to evidence the said interest thereon, at the office of said American Trust and Savings bank or at the office of the said Farmers' Loan and Trust Company, the said bonds each to contain the condition, set forth in the form below, and each of said bonds and coupons attached thereto and the trustees' certificate to be endorsed thereon to be substantially in the following form:

No. —. $1,000.00.

UNITED STATES OF AMERICA, *State of Illinois.*

The Lake Street Elevated Railroad Company First-mortgage Five Per Cent. Thirty-five year Gold Bond.

For value received, the Lake Street Elevated Railroad Company, a corporation created and existing under the laws of the State of Illinois, promises to pay to bearer (or if this bond be registered, to the registered holder thereof) at the American Trust and Savings bank, in the city of Chicago, in the State of Illinois, or at the Farmers' Loan and Trust Company, in the city of New York, in the State of New York, on the first day of July in the year of our Lord one thousand nine hundred and twenty-eight (A. D. 1928), the sum of one thousand dollars ($1,000.00) in gold coin of the United States of America of the present standard of weight and fineness, and to pay interest thereon in like gold coin at the rate of five per centum per annum from January 1st, A. D. 1893, upon the presentation and surrender at said American Trust and Savings bank or at
17 the Farmers' Loan and Trust Company of the annexed coupons as they severally become due, semi-annually on the first days of January and July of each year until said principal sum shall be fully paid.

Both principal and interest are payable without deduction on account of any taxes or assessments, by whatsoever authority the same may be levied.

This bond is one of a series of bonds of like tenor, date, amount and effect, numbered consecutively from one upwards, all of which, whether issued or to be issued, together with the interest thereon, without reference to the time when said bonds shall be actually issued, are equally secured by a mortgage or deed of trust, bearing even date herewith, made by said railroad company to said American Trust and Savings Bank of Chicago, Illinois, as trustee, and the Farmers' Loan and Trust Company of New York City, as cotrustee, conveying all and singular its railroad and appurtenances, its real and personal property, rights of property and franchises now owned or which may be hereafter acquired by said railroad company, as more particularly mentioned and described in said mo rt

gage or deed of trust. Said bonds issued and to be issued by said railroad company, its successors and assigns, are issued subject to and in accordance with the terms and conditions of said mortgage or deed of trust; the amount of bonds to be issued is limited as provided in and by said mortgage or deed of trust.

Upon default in the payment of any interest on any of said bonds the principal of said bonds may be made due and payable as provided in said mortgage or deed of trust.

It is agreed by the holder of this bond that no recourse shall be had for the payment of this bond, or the indebtedness evidenced thereby, or the interest thereon, or any part thereof to the individual liability of any stockholder, or officer of the said railroad company, such liability being waived, and by accepting this bond each successive holder assents to this provision.

This bond may be registered on the books of said railroad company at its financial agency in Chicago or in New York, and such registration noted thereon, after which no transfer thereof shall be valid except on said books, until after registered transfer to bearer. The annexed coupons shall always be transferable by delivery.

This bond shall not be obligatory and valid until the certificate endorsed hereon has been signed by said trustee and cotrustee under said mortgage or deed of trust, or their successors.

In witness whereof, the said The Lake Street Elevated Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by its secretary, and this bond to be signed by its president, and has attached hereto coupons authenticated by the fac-simile of the signature of its treasurer, this seventh day of April, one thousand eight hundred and ninety-three (A. D. 1893).

THE LAKE STREET ELEVATED RAILROAD COMPANY,

By —— ——, *President.*

Attest: —— ——, *Secretary.*

(*Coupon.*)

On the first day of ——, A. D. —, the Lake Street Elevated Railroad Company will pay to the bearer, at the American Trust and Savings bank, in the city of Chicago, or at the Farmers' Loan and Trust Company in the city of New York, twenty-five dollars ($25.00) in United States gold coin, for six months' interest on its first-mortgage bond No. —, without deduction for taxes as in said bond expressed.

—— ——, *Treasurer.*

(*Trustee's Certificate.*)

This bond is hereby certified to be one of the series of bonds described in the within-mentioned mortgage or deed of trust.

THE AMERICAN TRUST AND SAVINGS BANK, *Trustee,*

By —— ——, *President.*

THE FARMERS' LOAN AND TRUST COMPANY, *Cotrustee,*

By —— ——, *President.*

And, whereas, the board of directors of the railroad company with the concurrence of more than two-thirds of its stockholders aforesaid, has resolved to secure the payment of the said bonds so to be issued with the interest thereon, according to the tenor and effect of said bonds and coupons, by the execution of this mortgage or deed of trust.

Now therefore, this indenture witnesseth, that to secure the payment of the said bonds and all moneys payable thereunder to the amount issued or to be issued as hereinafter mentioned, and in consideration of the premises, and of one dollar lawful money of the United States of America to the railroad company by the trustees, at or before the ensealing or delivery of these presents, in hand paid, the receipt whereof is hereby acknowledged, the railroad company hath granted, bargained, sold, remised, released, aliened, enfeoffed, conveyed, confirmed, assigned, transferred and set over, and by these presents, doth grant, bargain, sell, remise, release, alien, enfeoff, convey, confirm, assign, transfer and set over unto the said parties of the second part and their successors and assigns forever, all and singular all the right, title, interest, claim or demand whatsoever, which the railroad now has or is entitled to, or which it shall or may at any time hereafter acquire or become entitled of, in or to, all and singular the railroad and railroads of the party of the first part constructed or now being or hereafter to be, constructed. The said road now being constructed being about seven and one-half miles, or thereabouts, in length, in all its branches from its main lines, and extending from Market street in the city of Chicago, in the county of Cook and State of Illinois, along Lake street to West Fifty-second street in said city, with a loop beginning and ending at said Market street. Also any and all branches and extensions thereof, which are or may hereafter be constructed, or acquired, or authorized to be constructed or acquired. Also all the lands, tenements, and hereditaments acquired or appropriated, or which may hereafter be acquired or appropriated for the purpose of a right of way or for other purposes, for said railroad or railroads, and all the easements or appurtenances thereto belonging, or in anywise appertaining, and all railroads, sidings, turnouts, ways, and rights of way, depot grounds, tracks, rails, bridges, viaducts, culverts, fences, depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, warehouses, machine shops, workshops, superstructures, erections and fixtures and other struc-

ture, with the improvements thereon, whether now held or hereafter at any time acquired for the use of said railroad or railroads or branches thereof, or in connection therewith or the business thereof; and with all the piers, foundations, columns, girders, trestles, sleepers, rails, telegraph, telephone and signal devices and other members and appliances of or connected with said railroad or belonging thereto, or used or provided, or intended to be used for the same, and all the engines, boilers, cables, locomotives, motors, tenders, passenger cars, freight cars, and other cars, rolling stock and equipments of or appertaining to, or used in connection with the said railroad, whether now owned or hereafter acquired by said
18 railroad company, and all tools, machinery, apparatus, fuel, materials and supplies whatever, whether for or in connection with such railroad itself or the motor power, rolling stock or equipment thereof, or for workshops, machine shops or other buildings, or construction or repairs of any kind now or hereafter belonging to or provided for, or intended to be used for or in connection with said railroad, or for the construction, operation or maintenance thereof. Also all and singular the franchises, licenses, permits and privileges, permits and privileges from any governmental or municipal authority, and all powers, benefits, rights, immunities, income, tolls, fares, profits and advantages belonging to the railroad company, appertaining to or to arise or to accrue from the said railroad and the maintenance and operation thereof, whether the same are now owned or possessed, or shall be hereafter acquired by the said railroad company, including all the franchises, power, rights and privileges pertaining to said railroad, conferred upon said railroad company in and by any ordinances which it now has from the city of Chicago, or which may be hereafter conferred upon it in any manner soever; together with all and singular the tenements, hereditaments and appurtenances to the said railroad company, and other property and premises hereby mortgaged or expressed, or intended so to be, or any part thereof, belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity of the railroad company of, in and to the same, and every part and parcel thereof, with the appurtenances as fully and completely as if the said railroad were at the date hereof fully constructed, completed and equipped.

To have and to hold, all and singular the above-described premises, property, rights, franchises and appurtenances unto the said parties of the second part, their successors and assigns forever, to the only proper use and behoof of the parties of the second part, their successors and assigns, in trust, nevertheless, for the equal *pro rata* use, benefit and security of each and all and every the persons or corporations who may be or become holders of any of the abovementioned bonds, numbered from one to the highest number that may be issued, inclusive, without any preference or priority of any one bond over another by reason of priority in the time of issue or

negotiation thereof or otherwise howsoever, and for the uses and purposes herein declared and expressed.

Provided, however, and these presents are upon the express condition that if the railroad company, its successors or assigns, shall well and truly pay or cause to be paid to the holders thereof, the principal of all the bonds secured or intended so to be, and the interest moneys to become due thereon respectively, at the time and in the manner specified in the said bonds and coupons, without deduction on account of taxes, or assessments, by whatsoever authority the same may be levied, and according to the true tenor and effect, and shall keep and perform all of the covenants, agreements and stipulations on its part herein contained, then these presents and the trusts hereby created, and all the estate, right, title and interest hereby vested in the said trustees, their successors or assigns, in the trust, shall cease and determine as fully as if this mortgage had never been executed, and in that case the said parties of the second part and their successor or successors in the said trust, on demand by said railroad company, and the cancellation of the bonds and coupons hereby secured, shall execute and deliver to it all such instruments as may be necessary to discharge and cancel this mortgage.

And, provided further, that until default shall be made by the railroad company, its successors or assigns, in the payment of the principal or interest of the said bonds hereby created, or some of them, or in the performance of some other of the covenants, stipulations and provisions on its part herein contained, the railroad company shall have and be entitled to the possession, management, operation, use and enjoyment of the property and franchises hereby mortgaged, and the rents, incomes and profits thereof.

It is hereby covenanted and agreed by and between the parties hereto, and the railroad company, party of the first part, hereby covenants, promises and agrees to and with each of the persons and corporations, firms and partnerships, who may become the holders of said bonds and coupons, or any of them, as follows, to wit:

First. That, except as hereinafter provided, the total issue of said bonds secured hereby shall be limited to six thousand five hundred (6,500) bonds, for the principal sum in the aggregate of six million, five hundred thousand dollars ($6,500,000) and that, except as hereinafter provided, no bonds in addition to said six million five hundred thousand dollars ($6,500,000) shall be certified and delivered by the trustees.

The said six thousand five hundred (6,500) bonds are to be used and disposed of as follows, to wit:

One thousand (1,000) bonds for the principal sum in the aggregate of one million dollars ($1,000,000) are to be used for the purpose of repaying or retiring eight hundred and twelve (812) six per cent. bonds of one thousand dollars ($1,000), each heretofore issued by the Lake Street Elevated Railway Company, for the principal sum in the aggregate of eight hundred and twelve thousand dollars ($812,000), and said one thousand (1,000) bonds secured hereby are to be reserved by the trustees in its possession and certified and delivered only in exchange for or to retire or pay a proportionate

number of said six per cent. bonds of said elevated railway company; that is to say, whenever any of said six per cent. bonds now outstanding be paid or retired, they shall be canceled, and, thereupon, the trustee shall certify and deliver to the company, or its order, a proportionate number of the said one thousand (1,000) bonds hereby secured and reserved as aforesaid, which bonds may then be used by the said company for its corporate purposes in the discretion of its board.

Five thousand one hundred and fifty (5,150) of said bonds hereby secured, for the principal sum of five million one hundred and fifty thousand dollars ($5,150,000), or the money derived from the sale thereof, are to be used to complete and acquire that part of the railroad of the said company which extends from Market street west to West Fifty-second street, in the city of Chicago, and also the loop beginning and ending at said Market street, as provided by ordinances passed by the city council of the city of Chicago, November 24, 1890, granting the right to construct said railroad or such work as may be substituted for said loop.

Three hundred and fifty (350) of said bonds, for the principal sum of three hundred and fifty thousand dollars ($350,000), are to be used for the lawful purposes of said company in the discretion of the board of directors.

The said five thousand one hundred and fifty (5,150) bonds and said three hundred and fifty (350) bonds are to be certified and delivered by the trustee on the order of the board of directors or the executive committee of the company. Bonds may be issued in addition to said six thousand five hundred (6,500) for the following purposes only:

(*a*) In adding to, extending and building additional railroad and branches of said railroad and acquiring railroads by construction or otherwise, at not exceeding eight hundred and fifty thou-
19 sand dollars ($850,000) of bonds per mile for a two-track road fully equipped with rolling stock, stations, switches, signal stations and necessary appurtenances.

(*b*) Paying, adjusting or settling claims or suits for damages arising out of the building or operation of said railroad or extensions or branches.

(*c*) Procuring right of way and such other real estate as may be needed by the railroad company in extending, adding to and building branches of said railroad.

(*d*) Paying any interest that may accrue and remain unpaid during the first two years of the operation of the railroad, provided to be constructed in said construction contract, after delivery and acceptance of said railroad from the contractors for the same, after applying to the payment of such interest the net earnings of the railroad during the said two years.

(*e*) In case the railroad shall eventually cross the Chicago river or either of its branches upon its own bridge, not exceeding five hundred thousand dollars ($500,000) of bonds for each such bridge and its approaches.

Second. Said bonds to be issued in addition to the six million,

five hundred thousand dollars ($6,500,000) of bonds are only to be issued by resolution or order of the board of directors of the railroad company, that additional bonds are required for the purposes hereinbefore set forth, and the proceeds from the sale of said bonds shall only be used for the purposes therein set forth and for no other. The certificate of the president or vice-president and chief engineer of the railroad company as to the existence of the facts necessitating the issue of said additional bonds for the purposes aforesaid, together with certified copies of the resolution or order of the board of directors aforesaid, shall be furnished to the trustee, and written orders, copies, resolutions and certificates shall in each and every case be sufficient and conclusive evidence to said trustees to a statement therein made and contained, and shall duly protect the trustees in respect of a certification and delivery of any of said bonds thereunder, and no duties shall be imposed on the trustees to look behind the same or any thereof before certifying and delivering bonds thereunder. To further assure this provision the said trustees, if they deem proper so to do, may appoint an agent of known integrity and business capacity, with full power to dismiss him and appoint another in his stead at pleasure, who shall have the right to attend all meetings of the board of directors, have free access to, and from time to time, examine all books of account of the party of the first part, appertaining to the application and expenditure of said proceeds of the sale of all of said bonds issued in excess of said six thousand five hundred (6,500) bonds, and shall make full report thereof to the trustees every three months, and as much oftener as they may, from time to time, require, for the information of the bondholders under this mortgage, and the railroad company shall pay said agent a reasonable compensation for his services during the time of the construction of said railroad, for which additional bonds are desired as aforesaid, not to exceed, however, one thousand dollars ($1,000) per annum.

Third. The company shall keep an agency in the city of New York while said bonds are outstanding for the payment of the principal and interest thereof, and shall keep at said agency books on which the transfer of any bond shall, upon request, be registered, without expense to the holder. Each registration of a bond shall be noted thereon, after which no transfer thereof can be made except on said books, until after registered transfer to bearer, when the bond will again become transferable by delivery until again registered in like manner in the name of the holder. The trustee shall have access to the said books at all reasonable times, and upon request in writing, shall have a list of registrations shown thereon at any specified date. For the purpose of administrating the trust created by this mortgage the person in whose name any bond is registered on said books shall be taken to be the owner thereof. The coupons annexed to any bond issued hereunder, whether the bond be registered or not, will always be transferable by delivery.

Fourth. The railroad company covenants and agrees that so long as it shall hold possession and enjoy the property and franchises hereby mortgaged or expressed or intended so to be, it will pay and

discharge all taxes, assessments and other governmental charges levied or imposed thereon during the continuance of this mortgage, that it will not suffer any lien superior to the lien hereby created to attach to said property or franchises or to any part thereof; that it will not permit or suffer any waste thereof; that it will keep and maintain the property hereby mortgaged in good order and condition; that it will keep all property hereby mortgaged, liable to be destroyed by fire, reasonably insured, and in case of destruction by fire, all insurance money shall be promptly applied to replace such property as may be destroyed or to the purchase of other property needed for the maintenance or operation of said railroad, and such replaced property shall immediately become subject to this mortgage. Such insurance shall be effected in companies satisfactory to the trustees, the policies to be delivered to and kept by the trustees, and to be made payable to the trustees or their successors. The trustees, however, shall be under no obligation to determine the amount of such insurance.

Fifth. If default shall be made in the payment of any interest money mentioned in the said bonds or coupons or any or either of them, when the same becomes due and is demanded, and if such default shall continue for a period of six months after such demand and no extension thereof shall be granted by the holders thereof, the trustees, or their successor or successors in the trust hereby created may, if thereunto requested in writing, under seal, by the holders of one quarter in interest of the said bonds then outstanding, and shall, if thereunto requested in writing, under seal, by the holders of a majority in interest of said bonds then outstanding, declare the principal of all the bonds hereby secured then outstanding to be and the same shall thereupon become immediately due and payable, anything contained in said bonds or herein to the contrary notwithstanding.

Sixth. If default shall be made in the payment of any interest moneys mentioned in the said bond and coupons, or any or either of them, when the same becomes due and demanded, whether such default shall have continued for the said period of six months or not, the trustees may and upon the request in writing by the holders of a majority in interest of the said bonds then outstanding, and upon being indemnified to their satisfaction for their expenses and liabilities, shall enter into and take full possession of said railroad, and of all property hereby mortgaged or expressed, or intended so to be, and hold, use, manage, maintain, and operate said railroad by such agent and managers as such trustees may appoint; collect and receive all moneys and revenues arising from such management and apply the same to the expenses of the trustees in the performance of the trust, including a reasonable compensation for their own services, the services of their counsel, attorneys, agents and other servants and next to the maintenance, management, and operation of the said railroad and of the property belonging thereto, hereby mortgaged, including the payment of taxes, assessments, and other governmental charges, damages and such useful additions, alterations or repairs to the mortgaged property or any of it as the trus-

tees may think proper to be made and next to the payment *pro rata* of the interest due, and in default of said bonds. In case all the said payments shall have been made in full and no suit to foreclose this mortgage shall have been begun, the trustees after making such provisions as to them may seem advisable for the payment of the next semi-annual installment of interest to fall due, shall restore to the railroad company, its successors or assigns, the possession of the premises hereby mortgaged. This power of entry may be exercised as often as occasion therefor shall arise in the judgment of the trustees pending this trust, and the trustees may, so long as any interest remains in default, continue to exercise the power herein granted for such period or periods as they may deem expedient, unless and until the holders of a majority in interest of the bonds secured hereby, then outstanding, shall otherwise in writing request.

Seventh. The provisions contained in article fifth of this mortgage shall not be construed to preclude the trustees or their successors from enforcing any appropriate remedy against the railroad company or its property and franchises hereby mortgaged by foreclosure or otherwise.

If default shall be made in the payment of principal or of any interest moneys mentioned in said bonds and coupons, or any or either of them, or any part thereof, when the same becomes due and is demanded, or in the performance of any covenants, promises or agreements on the part of the railroad company herein contained, and if such default shall continue for a period of six months, the trustees may, in their discretion, upon being requested in writing by the holders of a majority in interest of said bonds outstanding, and upon being indemnified to their satisfaction against costs and expenses which may be incurred by acting in pursuance of such request, shall either after entry as hereinbefore provided, or without such entry, proceed by suit or suits at law or in equity, as the said trustees may be advised, to enforce payment of the said bonds and to foreclose this mortgage, and to sell the railways, lands, premises, franchises, rights, appurtenances and property of whatsoever kind or nature, and wheresoever situated, hereby conveyed, under the judgment or decree of a court or courts of competent jurisdiction. In case the trustees shall proceed by suit or suits at law, or in equity, after default as above provided in said trust deed, shall be entitled to have the premises, franchises, rights, privileges and property hereby granted and conveyed, or intended so to be, sold at judicial sale under the order of a court or courts of competent jurisdiction, for or towards the satisfaction of the principal or interest or both, due and owing upon the bonds then outstanding, issued under or entitled to the benefits of the security of this mortgage, and for the enforcement of the rights, liens and securities of the trustees and the bondholders, and shall be entitled pending any such suit or proceedings, to a receivership of such railways, lands, premises, franchises, rights, appurtenances and property of the fares, freights, tolls, earnings, revenues, issues, profits and income thereof.

And the said railroad company doth for itself, its successors and

assigns, hereby further covenant and agreed by and with the trustees, that at and immediately upon the commencement, by the trustees of any suit or any other legal proceeding to obtain possession of the premises hereby mortgaged and conveyed upon the default in the performance of any of the covenants herein contained, the said railroad company, its successors and assigns, shall and will severally, waiving the issue and service of process, enter their voluntary appearance in such suit or proceeding and consent to the entry of a judgment for the recovery and possession of said premises and every part thereof, and that at and upon the commencement by the trustees of any suit or proceedings upon default in the performance of any of the covenants herein contained, for the foreclosure of this mortgage, the railroad company, its successors and assigns shall and will severally waiving the issuance and service of process, enter their voluntary appearance in such suit or proceeding and consent to the appointment of a receiver of said property, and the tolls, income, and revenue thereof for the sole benefit of the holders of the said bonds secured hereby.

Eighth. Every holder of the bonds secured hereby accepts the same subject to the express understanding and agreement that every right of action, whether at law or in equity under this indenture, is vested exclusively in the trustees, and under no circumstances shall the holder of any bonds or coupons, or any number of such holders have any right to institute any action at law upon any coupon or coupons, or otherwise, or any suit or proceedings in equity or otherwise, under this indenture, for the purpose of enforcing any payment, covenant or remedy, herein, or in said bonds contained, or to foreclose this mortgage except in case of refusal on the part of the trustees to perform any duty imposed on them by this indenture in respect to such payment, covenant, remedy or foreclosure after demand by a holder or holders of such bonds or coupons, and the production of such bonds or coupons by the holder thereof to the trustees, or the furnishing by such holders of other evidence satisfactory to the trustees that they are such holders, and the giving to the trustees of an indemnity satisfactory to them securing them against liability by reason of the action requested, but no inaction by said trustees upon any such request shall be deemed a refusal until after the expiration of a reasonable time for the consideration thereof by said trustees.

In every case in which the trustees are authorized or required under any provision of this instrument to take any action upon the request of the holders of said bonds, the trustees shall have the right to require the person or persons presenting such request to furnish proof as to the ownership of the bonds represented by him or them by the production of said bonds, or by affidavits or other evidence satisfactory to the trustees, and if such proof be so required, the said request will be without effect until such proof shall be furnished.

Ninth. Upon any sale of the property and franchises hereby mortgaged, or any part thereof, the purchaser in making payment therefor shall be entitled, after paying in cash so much as shall be

necessary to cover the costs and expenses of the sale and of the proceedings incident thereto, and all other charges that may be decreed to be paid in cash, to appropriate and use towards the payment of the remainder of the purchase price any of the bonds or coupons issued hereunder and entitled to participate in the proceeds of such sale, reckoning each bond or coupon so appropriated and used at such sum as shall be payable thereon, out of the net proceeds of the sale; and proper receipts shall thereupon be given to the holders of such bonds or coupons for the amount so payable thereon, and the bonds or coupons, if the net proceeds of the sale shall be sufficient to pay them in full, shall be delivered up to the person making the sale under decree of the court for cancellation; or if the proceeds of the sale shall not be sufficient to pay such bonds or coupons in full, then proper endorsements shall be made thereon of the amount so paid, and they shall then be returned to the holders.

Tenth. The trustees shall permit such necessary changes to be made in the line of said railroad as may be in their judgment advisable and advantageous to be made, and any property acquired by the railroad company in consequence of such changes shall immediately become subject to this mortgage.

Eleventh. While the railroad company shall be in possession of the mortgaged premises, and there shall be no existing default in the payment of principal or interest of any of said bonds, or
21 in the performance of any of the stipulations, conditions and provisions on the part of the railroad company in this mortgage contained, the railroad company, its successors and assigns may, from time to time, sell or otherwise dispose of, free and clear from the lien of this mortgage, any rolling stock, equipment or other personal property held or intended for use upon the said railroad which shall have become worn out or otherwise unsuitable for use, or, whenever it shall be intended to replace the same by other rolling stock or equipment or personal property; provided, however, that such sale or disposition shall not impair or reduce the efficiency of the rolling stock, equipment or other personal property required for the operation of the said railroad, and all rolling stock, equipment and personal property which shall from time to time be acquired for use upon or in connection with said railroad by the said railroad company, its successors or assigns, with the proceeds of any such sale or disposition or otherwise, shall be subject to the lien of this mortgage.

While the railroad company shall be in possession of the mortgaged premises and there shall be no existing default as aforesaid, the trustees shall have full power and authority, in their discretion, upon the written request of the railroad company, and upon the delivery to them of an attested copy of the resolution of the board of directors of the railroad company authorizing the same to release or convey any land or other real property hereby mortgaged, which in the judgment of the board of directors of the railroad company are not required for the purpose of constructing, maintaining or operating the said railroad, and which the railroad company shall in good faith sell and desire to have released and conveyed in order

to give good title to the purchasers, and all the proceeds arising from the sale of such land or real property shall either be applied to the purchase of other property for the railroad company, which shall immediately become subject to this mortgage and which in the judgment of the trustees is of equal value and benefit to the railroad company or at the option of the trustees, all the proceeds arising from the sale of any such lands or real property shall be paid over to them to be used by said trustees in the purchase of one or more of the bonds hereby secured in the following manner:

Upon the receipt by the said trustees of any of such proceeds, they shall advertise in a newspaper published in the city of New York, State of New York, and in the city of Chicago, Illinois, for four successive weeks, for proposals for the sale to them of bonds secured by this mortgage, and upon the coming in of such proposals they shall apply such proceeds to the purchase of such bonds at the lowest price at which the same can be obtained.

In case no proposals shall be so received or in case the proposals so received be not for an amount of bonds sufficient to exhaust all of said proceeds in the hands of the trustees, the trustees shall apply said proceeds or the balance thereof not applied to the purchase of bonds secured hereby upon the New York stock exchange, or Chicago stock exchange, or at the market price thereof.

All bonds and coupons purchased by the said trustees under the foregoing provisions shall be forthwith canceled by them and surrendered to the railroad company and shall not again be issued. Provided always, however, that no portion of the main line or branches of said railroad, or any part of the principal depots, stations, or terminal facilities or other property which in the judgment of the trustees is or may be essential to the due operation of the said railroad, shall be so released unless replaced by property which in the judgment of the trustees is of equal value and of equal benefit to the efficient operation of said railroad. Provided, that the trustees may consent to the release of that part of the railroad within the South division of the city of Chicago, upon such terms and conditions as they may impose.

The said trustees shall not be subject to any liability to any person or persons by reason of any act done or performed in good faith under the provisions of this article.

Twelfth. The railroad company further covenants that it will not apply for, or avail itself of any injunction or stay of proceedings, or plead, or in any way take advantage of any extension law, stay-law, valuation law, redemption law, appraisement law, or any other law, whether now in force, or which may hereafter be in force, which may in any way alter, impair or impede the rights or remedies of the holders of the bonds issued hereunder or of the trustees, or which shall affect or change the time, place, means, or mode of perfecting or enforcing such rights or remedies.

Thirteenth. The railroad company for itself, its successors and assigns, hereby further covenants and agrees to, and with the trustees and their successors in the trust, and to and with the respective persons and corporations who shall, at any time — the holders of the

said bonds hereby secured, or any of them, that the railroad company, its successors and assigns, shall and will at any time, and from time to time thereafter, make, do, execute and deliver all such further acts, deed- and things, as shall be reasonably advised, devised or required to effectuate the intention of these presents, and to secure and confirm to the said trustees and their successor, or successors in trust all and singular the property and estate, real and personal, and the rights, privileges and franchises hereinbefore described, and hereby intended to be mortgaged and conveyed, and so render the same, and especially such portions thereof as shall be hereafter acquired by the railroad company, its successors and assigns, available for the security and satisfaction of the said bonds, according to the intent and purposes herein expressed.

Fourteenth. Each of the bonds hereby secured is issued upon the express condition, to which each successive holder thereof expressly assents by receiving the same, that no stockholder or officer of the company shall be held personally liable to pay any part of the principal or interest of said bond, or the indebtedness evidenced thereby, by virtue of any law now in force or hereafter enacted, and each successive holder of any such bond, by receiving the same, expressly waives any right he may now or hereafter have to proceed against the stockholders or officers of the company for the payment of said bonds or the consideration thereof, or any part thereof, and agrees to have recourse for such payment only against the company and the property thereof.

Fifteenth. It is understood and agreed that the trustees shall not, nor shall either of them, be required to take any step in the execution of the trusts hereby created, or in the enforcement of their rights or powers hereunder, if in their or his opinion such action shall be likely to involve them or either of them in expense or liability, unless one or more of the bondholders shall, as often as required by the trustees, give them reasonable indemnity against the same, anything herein contained to the contrary notwithstanding, and that the trustees and their agents, attorneys and counsel shall be entitled to a reasonable compensation for all services rendered in connection with the trusts hereby created, or in pursuance of the provisions of this indenture, the railroad company agrees to pay to the trustees such compensation, and also all expenses reasonably incurred by the trustees hereunder, and the trustees shall have a lien therefor on the mortgaged property and the proceeds thereof.

It is further understood and agreed by and between the parties hereto, that the trustees shall not be answerable for any default or miscarriage of any agent or attorney by them or either of
22 them appointed hereunder, if such agent or attorney was selected with reasonable care, nor for the default of each other, nor for any error or mistake of judgment made by them or either of them in good faith, but shall only be liable each for its own individual wilful misconduct in the execution of said trusts; and it is further understood and agreed that the trustees are not required to insure any of the property hereby mortgaged unless placed in funds wherewith to effect such insurance, nor is either of them to see to

the recording or filing of this indenture as a mortgage or deed of real or personal property, or to take any action, or to do any act made requisite by statute for protecting, perpetuating or keeping good the lien of these presents upon the whole or any part of the hereby mortgaged railroad, real and personal property, fixtures, machinery and premises, save in their discretion, but the railroad company, its successors and assigns, shall and will, from time to time, do all things needful in that behalf.

The trustees, or either of them may resign and thereby become discharged from the trusts hereby created, by notice in writing to be given to the railroad company and published once a week for two successive weeks in a newspaper in the cities of Chicago and New York, at least two months before such resignation shall take effect, but such resignation shall take effect immediately upon the appointment of a new trustee herein, in place of the trustee resigning, if such new trustee shall be appointed before the time limited by such notice.

In case at any time hereafter, either of the said trustees or any trustee hereafter appointed, shall die or resign, or be removed, or otherwise cease to act, or become incapable of acting, the successor or successors of such trustee shall be appointed by the surviving or remaining trustee, by an instrument in writing, subscribed by it, or if there be none, then by the railroad company, by an instrument under the seal of said company, or in case no such appointment shall be made within thirty days after a vacancy occurs, then by any judge of the United States circuit court for the seventh circuit upon the application of the holders of not less than one million dollars of principal of the said bonds then outstanding; provided, nevertheless, and it is hereby agreed and declared that in case the holders of a majority in interest of said bonds then outstanding, be dissatisfied with any trustee or trustees so appointed, a new trustee or trustees to be nominated by the holders of a majority in interest of said bonds then outstanding shall be appointed in its or their place by a judge of said court upon application by the holders of such majority and eight days' written notice thereof given to said railroad company.

Any new trustee or trustees appointed hereunder shall execute, acknowledge and deliver to the remaining trustee, or to the trustees last in office, or if there be none, to the railroad company an instrument accepting such appointment hereunder, and thereupon such new trustee or trustees shall become vested with all the property, rights, duties and trusts of a trustee hereunder with like effect as if named as trustee herein, and the trustee or trustees removed or resigning, shall, on the written request of the new trustee or trustees, who may be appointed, immediately execute an instrument of transfer to vest in such new trustee or trustees upon the trusts herein expressed, all the property, privileges and rights hereunder, of the trustee or trustees so resigning or removed, and shall duly assign, transfer and deliver to such new trustee or trustees any moneys held hereunder for the further security of the bondholders.

It is understood and agreed that the word "trustee" or "trus-

tees" as used in this instrument, shall be held and construed to mean the parties of the second and third parts, or their successor or successors, for the time being, in the trust hereby created, and the words "railroad company" shall be held and construed as including the lawful successors and assigns of the said company.

Meetings of holders of the bonds secured by this instrument for the determination of, or action upon any of the provisions of this indenture which the majority in interest of the bondholders may have the right to decide, may be called by the trustees, and the bondholders may vote thereat by person or by proxy; or such other regulations or by-laws in respect to such meetings may be from time to time established, altered or repealed by the bondholders acting by a majority in interest as to them shall seem expedient, and any bondholder attending any such meeting shall have the right to require that any act or resolution of the bondholders affecting the rights or remedies of, or for the benefit of the bondholders, or the duties of the trustees, or the interest of the trust thereby created shall be authenticated by the signatures of all the persons assenting thereto, as well as by a minute of the proceedings at such meeting.

Lastly. The parties of the second and third parts have become parties hereto in order to signify their acceptance of the trusts hereby created.

In witness whereof, the said party of the first part has caused its corporate seal to be hereto affixed and attested by its secretary, and this instrument to be signed in its corporate name by its president, and the parties of the second and third parts have each caused its corporate seal to be hereto affixed and attested by their respective secretaries, and this instrument to be signed in their respective corporate names by their respective presidents.

[Seal of the Lake Street Elevated Railroad Company.]

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By JOHN A. ROCHE, *President.*

Attest: O. W. BRUNER, *Secretary.*

[Seal of the American Trust and Savings Bank.]

THE AMERICAN TRUST AND SAVINGS BANK,
By G. B. SHAW, *President.*

Attest: J. R. CHAPMAN, *Secretary.*

[Seal of the Farmers' Loan and Trust Company.]

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest: E. S. MARSTON, *Secretary.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Alice G. Nelson, a notary public in and for said county, in the State aforesaid, do hereby certify that John A. Roche, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as president of the Lake Street Elevated Railroad Company, and personally known to me to be the president of said The Lake Street Elevated Railroad Company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such president, and as the free and voluntary act of said The Lake Street Elevated Railroad Company, for the uses and purposes therein set forth.

And I do hereby also certify that O. W. Bruner, personally known to me to be the same person whose name is subscribed to the
23 foregoing instrument, as secretary of the said The Lake Street Elevated Railroad Company, personally known to me to be the secretary of said The Lake Street Elevated Railroad Company, appeared before me this day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate seal of said The Lake Street Elevated Railroad Company, as his free and voluntary act as such secretary, and as the free and voluntary act of said The Lake Street Elevated Railroad Company, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 3d day of May, A. D. 1893.

ALICE G. NELSON,
Notary Public.

[NOTARIAL SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Alice G. Nelson, a notary public in and for said county, in the State aforesaid, do hereby certify, that Gilbert B. Shaw, personally known to me to be the same person whose name is subscribed to the foregoing instrument as president of the American Trust & Savings bank, and personally known to me to be the president of said The American Trust & Savings bank, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such president and as the free and voluntary act of said The American Trust & Savings bank for the uses and purposes therein set forth.

And I do hereby also certify that Jas. R. Chapman, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as secretary of the said The American Trust & Savings bank, personally known to me to be the secretary of said The American Trust & Savings bank, appeared before me this day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate seal of said The American Trust & Savings bank as his free and voluntary act as such

secretary, and as the free and voluntary act of said The American Trust & Savings bank, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 3d day of May, A. D. 1893.

ALICE G. NELSON,
Notary Public.

[NOTARIAL SEAL.]

STATE OF NEW YORK, }
County of New York, } ss:

I, George H. Corey, a commissioner for the State of Illinois, duly commissioned and qualified, in and for said county, in the State aforesaid, do hereby certify that Roswell G. Rolston, personally known to me to be the same person whose name is subscribed to the foregoing instrument as president of the Farmers' Loan and Trust Company, and personally known to me to be the president of said The Farmers' Loan and Trust Company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such president, and as the free and voluntary act of said The Farmers' Loan and Trust Company, for the uses and purposes therein set forth.

And I do hereby also certify that Edwin S. Marston, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as secretary of the said The Farmers' Loan and Trust Company, personally known to me to be the secretary of said The Farmers' Loan and Trust Company, appeared before me this day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate seal of said The Farmers' Loan and Trust Company, as his free and voluntary act as such secretary, and as the free and voluntary act of said The Farmers' Loan and Trust Company, for the uses and purposes therein set forth.

Witness my hand and official seal, this 5th day of May, A. D. 1893.

[COMMISSIONER'S SEAL.] GEORGE H. COREY,
Commissioner for the State of Illinois,
Office, 66 Wall Street, N. Y.

UNITED STATES OF AMERICA, }
State of Illinois, } ss:

OFFICE OF SECRETARY.

I, William H. Hinrichsen, secretary of state of the State of Illinois, do hereby certify that the foregoing mortgage of the Lake Street Elevated Railroad Company *were* filed for record in the office of the secretary of state of the State of Illinois, on the 11th day of May, A. D. 1893, at 8 o'clock a. m., and duly recorded in Book No. 12 of Railroad Records at page 266.

In witness whereof, I hereto set my hand and affix the great seal of State at the city of Springfield, this 23rd day of May, A. D. 1893.

[Seal of the State of Illinois.]

W. H. HINRICHSEN,
Secretary of State.

STATE OF ILLINOIS, } ss.:
Cook County, }

Filed for record, May 6, 1893, at 5.30 o'clock p. m., and recorded in Book 4256 of Records, page 230.

SAMUEL B. CHASE, *Recorder.*

Filed for record in the office of the secretary of State of Illinois, May 11, 1893, at 8 o'clock a. m., and recorded in Book 12, page 266.

W. H. HINRICHSEN,
Secretary of State.

Fees, $18.00. Paid.

Endorsed: 3224. Gen. No., 172,156; term No., —. Superior court. Lake St. El. R. R. Co. *vs.* The Farmers' Loan & Trust Co. *et al.* Bill. Filed Jan. 30, 1896. S. D. Griffin, clerk. Knight & Brown, attorneys, Chicago.

24 And on the day and year last aforesaid, to wit, January 30th, A. D. 1896, there issued out of the office — clerk of said court the people's writ of summons; which writ, with sheriff's return thereon endorsed, is in words and figures as follows, to wit:

Chancery Summons.

STATE OF ILLINOIS, } ss.:
County of Cook, }

Superior Court of Cook County.

The People of the State of Illinois to the sheriff of said county, Greeting:

We command that you summon The Farmers' Loan and Trust Company, The American Trust and Savings bank, and The Northern Trust Company, if they shall be found in your county, personally to be and appear before the superior court of Cook county, on the first day of the term thereof to be held at the court-house, in Chicago, in said Cook county, on the first Monday of March next, to answer unto The Lake Street Elevated Railroad Company, a corporation, in its certain bill of complaint filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you have executed the same.

Witness Stephen D. Griffin, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 30th day of January, A. D. 1896.

STEPHEN D. GRIFFIN, *Clerk.*

25 P'd $3.00.

Served this writ on the within-named The American Trust and Savings Bank, a corporation, by delivering a copy thereof to Chapman, cashier of said corporation, this 1st day of February, 1896.

The president of said corporation not found in my county.

Served this writ on the within-named The Northern Trust Company, a corporation, by delivering a copy thereof to Byron L. Smith, president of said corporation, this 1st day of February, 1896.

The president of said corporation not found in my county.

Served this writ on the within-named The Farmers' Loan & Trust Company, a corporation, by delivering a copy thereof to Wm. Burry, agent of said corporation, this 6th day of February, 1896.

The president of said corporation not found in my county.

JAMES PEASE, *Sheriff*,
By J. A. McCARTNEY, *Deputy*.

(Endorsed:) 8931. McCart. 172,156. Superior court of Cook county, March term, 1896. L. St. E. R. R. Co. *vs.* Farmers' L. & T. Co. *et al.* Summons in chancery. Filed Feb. 25, 1896. S. D. Griffin, clerk. Knight & Brown, solicitors. Rec'd — o'clock — m., Jan. 31, 1896. James Pease, sheriff.

26 And afterwards, to wit, on the 31st day of January, A. D. 1896, there were filed in the office of the clerk of said court a certain petition & bond and appearance, which are in words and figures as follows, to wit:

In the Superior Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant, *vs.* FARMERS' LOAN & TRUST CO., THE AMERICAN Trust & Savings Bank, and The Northern Trust Co., Defendants.	In Chancery. Gen. No., 172,156.

Petition to Remove.

To the honorable judges of said court:

Your petitioner, The Farmers' Loan & Trust Company, now comes and, entering its appearance for the purposes of this petition only and limiting its appearance to making this petition for removal, respectfully shows that it is one of the defendants in the above-entitled cause, and that the matter in dispute therein exceeds, exclusive of interest and costs, the sum of two thousand dollars ($2,000).

Your petitioner further shows that at the time of the commencement of said cause and ever since it was and is a corporation organized and existing under and by virtue of the laws of the State of New York and is not organized under the laws of the State of Illinois or a citizen of said last-mentioned State, and that said Lake Street Elevated Railroad Company, said American Trust and Savings Bank, and said Northern Trust Company and each and all of

27 them were at the time of the commencement of this cause and still are corporations organized and existing under and by virtue of the laws of the State of Illinois and are citizens of said

State and are not organized under the laws of the State of New York or citizens thereof.

Your petitioner further shows that in this cause there are controversies which are wholly between citizens of different States, which controversies can be fully determined as between them, and that said controversies are between your petitioner on the one part and said Lake Street Elevated Railroad Company on the other part, and are as follows:

1. A controversy concerning the right of your petitioner to act as trustee under the mortgage a copy of which is attached to said bill of complaint.

2. A controversy concerning the removal of your petitioner as trustee under said mortgage.

3. A controversy concerning the enjoining of your petitioner from taking any proceedings or bringing or prosecuting any suits or acting under and by virtue of the terms, provisions, and conditions of said mortgage.

Your petitioner further shows that if the controversy in this cause is one and inseparable, then that such controversy is wholly between citizens of different States and can be fully determined between them, and that said controversy is between your petitioner on one part and the said Lake Street Elevated Railroad Company on the other part, and that said other defendants, The American Trust & Savings Bank and The Northern Trust Company, are not proper or necessary parties in this cause.

Your petitioner further shows that on the 30th day of January, A. D. 1896, it exhibited in the circuit court of the United States for the northern district of Illinois, northern division, its bill
28 in chancery for a foreclosure of the said mortgage, and in so doing was acting under and by virtue of the terms, provisions, and conditions of said mortgage; that its said bill of complaint was filed prior to the commencement of this suit or of any notice thereof to your petitioner, or of any notice to your petitioner of the temporary injunction issued in this cause, and that the suit so commenced by your petitioner is still pending and undetermined; that the bringing of this suit and the issuing of said injunction tends to obstruct and impede the administration and jurisdiction of the said circuit court of the United States in the suit so commenced by your petitioner in said circuit court of the United States and interferes with the property thereby brought into said circuit court, and that there is therefore involved in this suit a controversy arising under and by virtue of the laws of the United States, which controversy affects the jurisdiction of said circuit court of the United States in said cause so commenced therein by your petitioner.

Your petitioner offers herewith a good and sufficient bond in the penal sum of five hundred dollars ($500), conditioned for its entering in said circuit court of the United States for the northern district of Illinois, northern division, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded if said circuit court of the United States shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays this honorable court to proceed no further herein, except to make an order of removal, as required by law, and to accept the said surety and bond, and to cause the record herein to be removed to said circuit court of the United
29 States within and for the northern district of Illinois, northern division, according to the statute in such case made and provided.

And your orator will ever pray, etc.

THE FARMERS' LOAN & TRUST COMPANY,
By TURNER, McCLURE & ROLSTON AND
By RUNNELLS & BURRY, *Its Solicitors.*

STATE OF ILLINOIS, } ss:
County of Cook, }

William Burry, being duly sworn, on oath deposes and says that he is one of the solicitors for the petitioner in the foregoing petition; that he has read said petition and knows the contents thereof, and that the matters and things therein stated are true, as he verily believes.

WM. BURRY.

Subscribed and sworn to before me this 31st day of January, A. D. 1896.

[SEAL.] EMORY D. FRAZER,
Notary Public.

(Endorsed:) 172,156. Superior court, Cook county. Lake St. Ele. R. R. Co. *vs.* Farmers' Loan & Trust Co. *et al.* Petition for removal. Filed Jan. 31, 1896. S. D. Griffin, clerk. Runnells & Burry.

30 Know all men by these presents that we, William Burry and Rockwell King, of Chicago, in the county of Cook and State of Illinois, are held and firmly bound unto the Lake Street Elevated Railroad Company in the penal sum of five hundred dollars ($500), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors, or administrators, jointly and severally and firmly, by these presents.

Witness our hands and seals this 31st day of January, A. D. 1896.

The condition of the above obligation is such that if the Farmers' Loan & Trust Company shall enter and file or cause to be entered and filed in the circuit court of the United States in and for the northern district of Illinois, northern division, on the first day of its next session, a copy of the record and proceedings in a certain suit or action now pending in the superior court of Cook county, in the State of Illinois, bearing general number 172,156, in which said Lake Street Elevated Railroad Company is complainant and said

Farmers' Loan & Trust Company and others are defendants, and shall pay all costs that may be awarded by the said circuit court of the United States if said circuit court shall hold that said suit was wrongfully or improperly removed to said United States circuit court, then this obligation to be void; otherwise to remain in full force and effect.

WM. BURRY. [SEAL.]
ROCKWELL KING. [SEAL.]

31 STATE OF ILLINOIS, } ss:
County of Cook, }

Rockwell King, being duly sworn, on oath says that he signed the foregoing bond, and that he is worth more than the sum of ten thousand dollars ($10,000) in unincumbered real estate in the city of Chicago over and above all his debts and liabilities.

ROCKWELL KING.

Subscribed and sworn to before me this 31st day of January, A. D 1896.

[Seal of Emory D. Frazer, Notary Public, Cook Co., Ills.]

EMORY D. FRAZER,
Notary Public.

(Endorsed:) 172,156. Superior court, Cook county. Lake Street Ele. R. R. Co. *vs.* Farmers' Loan & Trust Co. *et al.* Bond. Filed Jan. 31, 1896. S. D. Griffin, clerk. Runnells & Burry, sol'rs.

32 STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
THE FARMERS' LOAN AND TRUST COMPANY *et al.*, Defendants.
Gen. No., 172,156. In Chancery.

We hereby enter the appearance of The Northern Trust Company, one of the defendants in the above-entitled cause, and of ourselves as its solicitors.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for said Defendant.

(Endorsed:) Superior Ct. Chancery. Gen. No., 172,156. The Lake Street Elevated Railroad Company *vs.* The Farmers' Loan and Trust Company. Appearance of Northern Trust Company. Filed Jan. 31, 1896. S. D. Griffin, clerk. Dupee, Judah, Willard & Wolf, attorneys, Adams Express bldg., Chicago.

33 And afterwards, to wit, on the 1st day of February, A. D. 1896, there was filed in the office of the clerk of said court a certain appearance & objections, which *is* in words and figures as follows, to wit:

Superior Court, Cook County.

LAKE ST. ELEVATED R. R. Co. *vs.* FARMERS' LOAN & TRUST CO. ET AL. } 3224; 172,156. In Chancery.

We hereby enter the appearance of The American Trust & Savings Bank, trustee, one of the defendants in said cause, and of ourselves as its solicitors herein.

MORAN, KRAUS & MAYER,
Sol's for said American Trust & Savings Bank.

(Endorsed:) 3234; 172,156. Lake Street Elev. R. R. Co. *vs.* Farmers' L. & T. Co. Appearance of Am. Trust & Savings Bank, trustee. Filed Feb. 1, 1896. S. D. Griffin, clerk.

34 STATE OF ILLINOIS, *County of Cook,* } *ss:*

In the Superior Court of Cook County. In Chancery.

LAKE STREET ELEVATED RAILROAD COMPANY *vs.* FARMERS' LOAN & TRUST COMPANY, AMERICAN Trust & Savings Bank, and Northern Trust Company. } Gen. No., 172,156.

Now comes The American Trust & Savings Bank, defendant herein, and objects to the removal of said above-entitled cause in and to the circuit court of the United States for the northern district of Illinois, northern division thereof, as prayed for in and by a certain petition for removal filed herein on January 31st, 1896, by The Farmers' Loan & Trust Company, one of the defendants herein, and for cause of said objection states the following:

1. That said petitioner has not filed a good and sufficient bond, as provided in and by the statutes of the United States in and for such cases made and provided.

2. That the said bonds filed herein is insufficient in form and substance.

3. That in and by said cause herein there are not controversies which are wholly between citizens of different States, and that said controversies are not separable, and that said controversies are not wholly between said Lake Street Elevated Railroad Company and the said petitioner, said Farmers' Loan & Trust Company.

35 4. That this objector is a proper and necessary party.

5. That said defendant, The Northern Trust Company, is a proper and necessary party.

6. That this objector and said Northern Trust Company are not made parties defendant to said bill for the purpose of making a controversy or cause of action wherein a citizen of the State of Illinois is complainant and citizens of the State of Illinois are defendants.

7. That there is not involved in this suit a controversy arising under and by virtue of the laws of the United States, which controversy affects the jurisdiction of said circuit court of the United States.

Wherefore, and for divers other good causes, this objector objects to the removal of said cause, as aforesaid, and prays that the petition for said removal be denied.

THE AMERICAN TRUST & SAVINGS BANK,
By MORAN, KRAUS & MAYER,
Its Solicitors.

(Endorsed:) G. No., 172,156; T. No., —. Superior court of Cook county. Lake St. Elevated R. R. Co. *vs.* Farmers' Loan & Trust Co. *et al.* Objections of American Trust & Savings Bank. Filed Feb. 1, 1896. S. D. Griffin, clerk. Moran, Kraus & Mayer, attorneys and counsellors, Unity building, Chicago.

36 And afterwards, to wit, on the 3rd day of February, A. D. 1896, the same being one of the days of the February term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE LAKE STREET ELEVATED RAILROAD COMPANY
vs.
THE FARMERS' LOAN AND TRUST COMPANY ET AL. } 172,156. Bill.

This day came on for hearing the motion, with petition and bond, for the removal of this cause to the United States circuit court, and, after consideration, it is ordered that the same be denied; to which ruling the Farmers' Loan and Trust Company then and there excepted, and the court gave said Farmers' Loan and Trust Company ten days in which to present its certificate of evidence in connection with said ruling.

37 And afterwards, to wit, on the 17th day of March, A. D. 1896, there was filed in the office of the clerk of said court a certain answer, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss.:
Cook County, }

In the Superior Court of Cook County, March Term, 1896.

LAKE STREET ELEVATED RAILROAD COMPANY
vs.
FARMERS' LOAN AND TRUST COMPANY, NORTHERN TRUST COMPANY, *et al.* } In Chancery.

The Separate Answer of the Northern Trust Company of Chicago, One of the Defendants, to the Above and Foregoing Bill.

This defendant, saving and reserving to itself all and all manner of benefit of exception that may be had or taken to the many errors and uncertainties in said bill of complaint contained, for answer thereunto says that it admits the allegations of said bill as to the organization of said The Lake Street Elevated Railroad Company and the execution by it of said trust deed of April 7, 1893, to said Farmers' Loan and Trust Company and said American Trust and Savings bank, and shows that this defendant is informed that it is true that said Farmers' Loan and Trust Company has never complied with the laws of the State of Illinois in relation to trust companies, and further that defendant believes it to be true that said Farmers' Loan and Trust Company has been doing business in the State of Illinois without having made the deposit of securities
38 with the auditor as required by the laws of Illinois, and it also admits that under said trust deed bonds in excess of seven thousand have been issued and certified; that complainant has built and is operating an elevated railroad in the city of Chicago, as recited in said bill of complaint, and has been unable to earn sufficient money to pay the interest on all of its bonded indebtedness; that defendant believes it to be true that said Ziegler and other persons joining with him have made the demands on the Farmers' Loan and Trust Company and the American Trust and Savings bank set forth in the bill of complaint herein, and that said complainant has filed a bill in the circuit court of Cook county, Illinois, to enjoin said William Ziegler and other persons from taking any action to foreclose said trust deed.

Further, respondent says that it is now the holder of sixty-five hundred and ninety-two (6,592) of said bonds named and referred to in said deed of trust, and that it has not made any call or demand upon the trustees under said trust deed, or either of them, to take any steps to foreclose said trust deed, and respondent believes it to be true that said American Trust & Savings bank, after a full examination of the affairs of said railroad company, declined to join with said Farmers' Loan and Trust Company in any proceedings whatever to foreclose said trust deed, and respondent shows that it is advised by its counsel that said Farmers' Loan and Trust Company having failed to comply with the laws of the State of Illinois, as aforesaid, is not competent to act as a trustee under said trust deed.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged; without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed,
39 and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE NORTHERN TRUST COMPANY,
By ARTHUR HEURTLEY, *Its Secretary.*

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for said Defendant.

(Endorsed:) General No., 172,156; term No., 3224. Superior court of Cook county. Lake Street Elevated R. R. Co. *vs.* Farmers' Loan & Trust Company *et al.* Answer. Filed Mar. 17, 1896. S. D. Griffin, clerk. Dupee, Judah, Willard & Wolf, attorneys, Adams Express bldg., Chicago.

40 And afterwards, to wit, on the 18th day of March, A. D. 1896, there were filed in the office of the clerk of said court certain appearances, answer, and replications, which are in words and figures as follows, to wit:

In the Superior Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD CO.
vs.
THE FARMERS' LOAN & TRUST CO. ET AL.

Now comes said defendant, The Farmers' Loan & Trust Company, and entering its appearance for the purpose of this motion only, moves to quash the return of the process herein for the reason that William Burry, upon whom such process was served, was not in any way an agent of said The Farmers' Loan & Trust Company and process could not be served upon him. This limited appearance is also made upon protest that this cause is no longer pending in this court, but has been removed to the circuit court of the United States for the northern district of Illinois, northern division.

RUNNELLS & BURRY,
For the Farmers' Loan & Trust Co.

(Endorsed:) 172,156; 3224. Lake St. Ele. R. R. Co. *vs.* F. Loan & Trust Co. Appearance. Filed Mar. 18, 1896. S. D. Griffin, clerk.

41 In the Superior Court of Cook County.

THE LAKE STREET ELEVATED R. R. CO.
v.
THE FARMERS' LOAN AND TRUST CO. ET AL. } In Chancery.

Now comes said Farmers' Loan and Trust Company and enters its appearance and asks leave to answer herein.

RUNNELLS & BURRY,
For said Farmers' Loan and Trust Co.

(Endorsed:) 3224; 172,156. L. S. E. R. R. Co. *v.* F. L. & T. Co. Appearance. Filed Mar. 18, 1896. S. D. Griffin, clerk.

42 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the Superior Court of Cook County. In Chancery.

LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
FARMERS' LOAN & TRUST COMPANY, AMERICAN Trust & Savings Bank, and The Northern Trust Company, Defendants. } Gen. No., 172,156; Term No., 3224.

The Several Answer of The American Trust & Savings Bank, One of the Defendants, to said Bill of Complaint.

This defendant, reserving to itself all right and manner of exceptions to the said bill of complaint, for answer thereto says:

1. It admits that the Lake Street Elevated Railroad Company was organized and is an existing corporation, as alleged in said bill, and that its original capital stock was as therein stated, and that said capital stock was subsequently increased, as alleged in said bill.

2. It admits that the Lake Street Elevated Railroad Company did, as alleged in said bill of complaint, execute and deliver the certain mortgage or trust deed made Exhibit "A" to said bill to this defendant and to the codefendant The Farmers' Loan & Trust Company, as alleged in said bill; that a true copy of said mortgage or deed of trust is attached to said bill as Exhibit "A." It further admits that said mortgage was signed and accepted by this defendant and by said Farmers' Loan & Trust Company, as alleged in said bill,
43 and that said mortgage was filed for record in the recorder's office of said Cook county and in the office of the secretary of the State of Illinois, as in said bill alleged.

3. It neither admits nor denies the allegation in said bill that said Farmers' Loan & Trust Company at the time said mortgage was made and executed, delivered, and recorded had not nor prior thereto nor has it since complied with the laws of said State requiring the deposit with the auditor of public accounts of said State of the sum of two hundred thousand dollars ($200,000) in stocks or

bonds or in other securities, as alleged in said bill, but demands strict proof thereof, and says that at the time this defendant accepted said mortgage or deed of trust it had no knowledge, information, or belief whatsoever that said Farmers' Loan & Trust Company had not made compliance with said laws of said State of Illinois, as alleged in said bill. It neither admits nor denies that at the time of the execution, delivering, and acceptance of the trust under said mortgage complainant did not know that said Farmers' Loan & Trust Company had not complied with said laws of said State of Illinois, but demands strict proof thereof.

4. It neither admits nor denies that since the acceptance of said trust by said Farmers' Loan & Trust Company the latter has been doing business in the State of Illinois, as alleged in said bill, without having made the deposit as required by the laws of said State of Illinois, but demands strict proof thereof.

5. It admits the allegation in said bill that said Farmers' Loan & Trust Company has appointed William Burry as the agent of said Farmers' Loan & Trust Company to represent it as such agent and enforce compliance on the part of complainant with the trusts reposed in said Farmers' Loan & Trust Company under said mortgage, and that said William Burry, as such agent, for and
44 on behalf of said Farmers' Loan & Trust Company, has acted and is still acting in said State of Illinois as the agent of said Farmers' Loan & Trust Company and is doing business in said State under and by virtue of the authority vested in said Farmers' Loan & Trust Company under said mortgage.

6. It admits the allegation of said bill that under and by virtue of said mortgage there was certified and delivered by this defendant to said Farmers' Loan & Trust Company six thousand five hundred (6,500) bonds of one thousand dollars ($1,000) each, provided to be issued by said mortgage.

7. It admits that since the acceptance of said trust by said Farmers' Loan & Trust Company the latter has transacted and done business through its said agent, William Burry, in connection with the trusts provided for in said mortgage and accepted by said Farmers' Loan & Trust Company under said mortgage, and also admits that said Farmers' Loan & Trust Company claims the right and authority to do business by the execution and carrying out of the trusts assumed by it, as alleged in said bill.

8. It further admits that since the making and execution of said mortgage complainant has built and is operating a railroad in the manner and for the purposes and in the modes specified and alleged in said bill.

9. It admits the allegations of said bill that the complainant has been unable to earn sufficient money to operate its said railroad, to pay the interest upon its bonded indebtedness, as set forth in said bill, and says that it has no knowledge, information, or belief, other than from the allegation contained in said bill, that one William Ziegler has conspired and confederated or is conspiring or confederating with various persons representing certain of
45 said bonds, as alleged in said bill, but it admits that said William Ziegler and others made a demand upon said

Farmers' Loan & Trust Company and this defendant to proceed to foreclose said mortgage and take possession by virtue thereof of the property covered by said mortgage or file a bill to foreclose the same.

10. It admits that complainant, as alleged in said bill, filed a bill in the circuit court of Cook county against William Ziegler and others, including said Farmers' Loan & Trust Company and this defendant, and says that said bill was filed on the day of December 31st, 1895, as case No. 151,543, and admits that in said bill an injunction was prayed and issued enjoining said Farmers' Loan & Trust Company and this defendant from taking any action or proceeding to foreclose said mortgage under the request or demand made by said William Ziegler and others, as alleged in said bill, and says that on or about the 24th day of January, 1896, said bill against said William Ziegler and others was, upon the application of said William Ziegler and others, not including, however, this defendant, removed into the United States circuit court in and for the northern division of the northern district of Illinois, in which latter court said bill and said injunction are now pending, undetermined and undisposed of.

11. That it admits that said complainant was informed by said William Burry that no other demand for action was made upon said Farmers' Loan & Trust Company than that made by said Ziegler and his said codefendant, and this defendant admits the allegation of said bill of the statement of said William Burry that said Farmers' Loan & Trust Company proposed to and would file a bill to foreclose said mortgage, as is alleged in said bill.

12. It admits the allegations of said bill as to the payment by the complainant of the interest upon said bonded indebted-
46 ness, but says that it has no knowledge, information, or belief as to the allegation that complainant was enabled to obtain an advance or loan to pay the interest falling due January 1st, 1895, to those who would turn over the coupons as security for such advancement.

13. It admits that said Farmers' Loan & Trust Company intends, as alleged in said bill, to file a bill, and in fact has filed a bill, to foreclose said mortgage. It avers that it is advised by counsel that it was not and is not the duty of said Farmers' Loans & Trust Company, under the circumstances, to file said bill, but denies upon information and belief that the said bill was filed, or that said Farmers' Loan & Trust Company intended to file the same, as alleged in said bill, for the purpose of injuring and destroying the property and assets.

14. It admits, as alleged in said bill, that the holders of six thousand five hundred seventy-four (6,574) of said bonds requested this defendant and said Farmers' Loan & Trust Company to take no action whatsoever under said mortgage with reference to the failure of complainant to provide for or pay the interest upon said bonds, as alleged in said bill, and admits that this defendant, in compliance with such request, but only after a full, thorough, and careful examination into the affairs of said complainant, did, on January 28th,

1896, decline and refuse to join with said Farmers' Loan & Trust Company in any proceedings to foreclose said mortgage on account of the failure of complainant to pay the interest on said bonds, as alleged in said bill, but says that it has no knowledge, information, or belief, other than from the allegations contained in said bill, that it is the desire and wish of the holders of over six thousand five hundred (6,500) of said bonds that said Farmers' Loan & Trust Company should be removed from its position as trustee under said
47 mortgage in the manner or for the reasons alleged in said bill.

15. Further answering, this defendant says that it accepted said trust relying upon the acceptance and co-operation in the performance of the same by said Farmers' Loan & Trust Company, and that since the acceptance of said trust by said Farmers' Loan & Trust Company it has been acting as a trustee under said trust deed.

16. Further answering, this defendant submits that since the entry of the order herein on the 3rd day of February, 1896, overruling and denying the motion of said Farmers' Loan & Trust Company to remove this cause into the United States circuit court in and for the northern division of the northern district of Illinois, said Farmers' Loan & Trust Company, notwithstanding said order, filed on the 4th day of February, 1896, in the said United States circuit court, a transcript of the record in this cause, and that on the — day of February, 1896, this defendant and the said complainant and said Northern Trust Company filed in said United States circuit court their respective motions to strike said transcript of the record from the files and remand this cause to this court, but that on the 16th day of March, 1896, said United States circuit court overruled all of said motions and refused to remand this cause to this court, and said United States circuit court has so, as aforesaid, taken and has continued, since the taking thereof, jurisdiction over this cause, and is now exercising such jurisdiction; all of which facts this defendant brings to the notice of this court for the proper consideration and action of this court in the premises.

17. This defendant, further answering, denies that complainant is entitled to the relief or any part thereof in the said bill of complaint demanded, and prays the same advantage of this an-
48 swer as if this defendant had pleaded or demurrer to the said bill of complaint, and prays to be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

AMERICAN TRUST & SAVINGS BANK,
By MORAN, KRAUS & MAYER, *Its Solicitors.*

(Endorsed:) G. No., 172,156; T. No., 3224. Superior court of Cook county. Lake St. Elevated R. R. Co. *vs.* Farmers' Loan & Trust Co. *et al.* The several answer of American Trust & Savings Bank to bill of complaint. Filed Mar. 18, 1896. S. D. Griffin, clerk. Moran, Kraus & Mayer, attorneys and counsellors, Unity building, Chicago.

49 *Replication to Answer.*

STATE OF ILLINOIS, }
Cook County, } *ss.:*

In the Superior Court of Cook County, March Term, A. D. 1896.

THE LAKE STREET ELEVATED RAILROAD COMPANY, a Corp., etc., *vs.* THE FARMERS' LOAN AND TRUST COMPANY *et al.* } In Chancery. Gen. No., 172,156.

The replication of The Lake Street Elevated Railroad Company, a corp., etc., complainant, to the answer of The Northern Trust Company, a corp., etc.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant
50 is ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by its said bill it has already prayed.

KNIGHT AND BROWN,
Solicitors for Complainant.

(Endorsed:) 172,156; 3224. Superior court of Cook county. The Lake Street E. R. R. Co., a corp., *vs.* The Farmers' Loan and Trust Co. *et al.* Replication to ans. of N. T. Co. Filed Mar. 18, 1896. S. D. Griffin, clerk. Knight and Brown, solicitors for complainant.

51 *Replication to Answer.*

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County, March Term, A. D. 1896.

THE LAKE STREET ELEVATED RAILROAD Company, a Corp., etc., *vs.* THE FARMERS' LOAN AND TRUST COMPANY *et al.* } In Chancery. Gen. No., 172,156.

The replication of The Lake Street Elevated Railroad Company, a corp., etc., complainant, to the answer of The American Trust and Savings Bank, a corp., etc.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, — insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

52 KNIGHT AND BROWN,
Solicitors for Complainant.

(Endorsed:) 172,156; 3224. Superior court of Cook county. The Lake Street E. R. R. Co., a corp., etc., *vs.* The Farmers' Loan and Trust Co. *et al.* Replication to ans. of A. T. & S. Bk. Filed Mar. 18, 1896. S. D. Griffin, clerk. Knight and Brown, solicitors for complainant.

53 And on the day and year last aforesaid, to wit, March 18th, A. D. 1896, the same being one of the days of the March term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE LAKE STREET ELEVATED RAILROAD COMPANY *vs.* THE FARMERS' LOAN & TRUST COMPANY ET AL. } 172,156. Bill.

This cause coming on further to be heard upon the motion of the complainant that the paper filed in this court in said cause on the eighteenth day of March, 1896, by Runnells and Burry in behalf

of the Farmers' Loan and Trust Company be stricken from the files of said cause, and it appearing to the court that all parties in interest have had due notice hereof, and the court having heard arguments of counsel and being now fully advised in the premises, doth find that it has jurisdiction of the parties and subject-matter hereof, and that said paper filed in this cause on the eighteenth day of March, 1896, by Runnells and Burry in behalf of the Farmers' Loan and Trust Company was improperly and improvidently filed and is an insufficient and improper appearance and motion. Wherefore it is ordered the said paper be, and the same is hereby, stricken from the files of this cause in this court. Now comes the defendant The Farmers' Loan and Trust Company, by Runnells and Burry, its attorneys, and in open court asks leave to enter its general appearance herein and for time to answer the bill of complaint herein. Whereupon the court grants leave to the said The Farmers' Loan and Trust Company to forthwith enter its general appearance herein. Whereupon said Farmers' Loan and Trust Company, by Runnells and Burry, its attorneys, enters herein its general appearance, and as a condition of such leave being granted to so enter its general appearance the said The Farmers' Loan and
Trust Company is hereby ruled to answer the bill of com-
54 plaint herein before 10 o'clock a. m. of Wednesday, March
25, 1896. Thereupon the complainant files, by leave of court, its motion and affidavit in support thereof for a rule on William Burry to show cause why he should not be attached for contempt in disobeying the injunctional order heretofore entered herein. Whereupon said William Burry in open court agrees to file herein an answer to said motion before ten o'clock a. m. of Wednesday, March 25th, 1896, and the hearing of said motion is hereby set for ten o'clock a. m., Wednesday, March 25th, 1896, or as soon thereafter as the same can be heard by this court.

55 And afterwards, to wit, on the 25th day of March, A. D. 1896, there was filed in the office of the clerk of said — a certain answer, which is in words and figures as follows, to wit:

In the Superior Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant, *vs.* THE FARMERS' LOAN & TRUST CO. ET AL., Defendants.	In Chancery.

Answer of said Defendant, The Farmers' Loan and Trust Company.

This defendant, saving and reserving unto itself all manner of benefit or exception that may or can be had or taken to the many errors, uncertainties, and other imperfections in said bill of com-
a plaint contained, for answer thereunto, or to so much and such parts thereof as it is advised it is material to make answer unto, answering, says that—

It admits the incorporation of said complainant, the making of said trust deed of April 7th, 1893, the execution, acknowledgment, and recording of said trust deed, and the fact that this defendant had not then nor has it since deposited with the auditor of public accounts any sum of money whatsoever.

It denies that it has not in all respects complied with the laws of the State of Illinois, and that it is obliged by law to deposit any sum of money with said auditor of the State of Illinois, as alleged in said bill, and that said complainant did not know at the time of the making and execution of said mortgage that this defendant
56 had made no such deposit, and, on the contrary, avers that said complainant did know that no such deposit had been made.

This defendant denies that at any time since the making of said trust deed it had been doing business in the State of Illinois, or that said William Burry has at any time or in any way acted as the agent of this defendant.

This defendant admits that under the terms of said trust deed there were issued sixty-five hundred bonds of one thousand dollars each, as provided thereby, and that certain other bonds in addition thereto have been issued as provided by said trust deed, but denies that any of said bonds were issued or delivered to any person under the direction of said Burry as this defendant's agent, or that the said Burry has done any business as agent in the State of Illinois in connection with the trusts contained in said trust deed or is now claiming the right or authority so to do. This defendant is not sufficiently acquainted with the railroad erected by said complainant to admit or deny the construction thereof, as in said bill alleged, and leaves said complainant to such proof in regard thereto as it may see fit to make.

This defendant does not know concerning any conspiracy or confederation entered into by William Ziegler, or of any other matter or thing in said bill contained concerning said William Ziegler, so as to either admit or deny the same, but calls for proof in regard to each and every such matter.

This defendant admits that William Burry, as its counsel, had a conference on the 27th day of January, 1896, with certain counsel representing the American Trust & Savings bank and said complainant, but denies that at such conference of counsel he
57 was acting as an agent; that it was well understood that he was not so acting; that he appeared therein as counsel, and that the solicitor who drew the bill of complaint herein either did not know the difference between an agent and a lawyer or purposely misstated the fact; and it denies that said Burry at that time stated that no other demand for action had been made upon this defendant than that made by said Ziegler; and avers that it stated that in considering whether it was proper to file a bill to foreclose the said trust deed it was not acting in accordance with the request or objection of any faction of bondholders, but upon its own judgment and discretion.

This defendant admits that a large part, amounting to over two-

thirds, of the interest due under the terms of said trust deed on January 1, 1895, has not been paid; that all the interest falling due under said mortgage on the first day of July, 1895, and on the first day of January, 1896, has not been paid, and that there is over half a million dollars of unpaid interest due under the terms of said trust deed. It admits that said complainant endeavored to and did borrow some money to pay part of the interest falling due on January 1st, 1895, to each party who would turn over the coupons then falling due as security for such advancement and consent that they should be so turned over without being paid, thereby simply increasing the indebtedness of said complainant, and avers that said complainant and said American Trust and Savings bank refused to pay any money to any bondholders who would not turn over the coupons so unpaid, thereby in effect discriminating against certain bondholders in the payment of interest due.

58 This defendant denies that it has ever taken any action or intended to take any action in violation of its duty and for the purpose of injuring and destroying the property and assets of complainant, but avers that all of the other parties to this cause are proceeding in violation of their duty and to the manifest wrong and injury of all bondholders, except those who will accede to their wishes, surrender their coupons uncancelled and to be still kept alive as indebtedness of the company, and accept a reduced amount of bonds in place of those which they now hold, and charges that all of the other parties to this cause are engaged in a conspiracy to so force bondholders to accept a reduction of the amount of the bonds which they now hold through and by means of a so-called scheme of reorganization, commenced and attempted to be enforced by said Lake Street Elevated Railroad Company.

This defendant denies that the owners of 6,574 of said bonds requested the trustees in said trust deed to take no action whatsoever under said trust deed with reference to the failure of said complainant to pay the interest so in default, and further charges that said Northern Trust Company has no right, power, or authority to in any way make such demand of said trustees. It also denies that it is the desire and wish of the owners of any of said bonds that this defendant should be removed from its position as trustee under said mortgage, or that any bondholders have ever signified such a desire, and denies that the Northern Trust Company is the owner of any of said bonds, or that it is acting in good faith as the agent of the bondholders who have deposited bonds with it.

59 This defendant files this answer, protesting, however, that this cause has already been according to law removed from this court into the circuit court of the United States for the northern district of Illinois, northern division, and it is no longer pending in this court, and without waiving any right arising under said proceedings for said removal.

And now, having fully answered said bill of complaint, this de-

fendant prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE FARMERS' LOAN & TRUST COMPANY,
By RUNNELLS & BURRY,
Its Solicitors.

(Endorsed:) 172,156; 3224. Superior court of Cook county. The Lake Street Elevated R. R. Co. *et al. vs.* The Farmers' Loan & Trust Company *et al.* Answer of Farmers' Loan & Trust Company. Filed Mar. 25, 1896. S. D. Griffin, clerk. Runnells & Burry, solicitors.

60 And on the day and year last aforesaid, to wit, March 25th A. D. 1896, the same being one of the days of the March term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE LAKE STREET ELEVATED RAILROAD COMPANY *vs.* THE FARMERS' LOAN AND TRUST COMPANY ET AL. } 172,156. Bill.

And now, on this day, came said The Farmers' Loan and — Company, by William Burry, and the said William Burry, by his counsel, and on motion of counsel for said The Farmers' Loan and Trust Company and said Burry, *and* the hearing of the matter in the above-entitled cause set for this day is hereby continued for further hearing until Saturday next, March 28, 1896, at 10 o'clock a. m.

61 And afterwards, to wit, on the 30th day of March, A. D. 1896, there was filed in the office of the clerk of said court a certain replication, which is in words and figures as follows, to wit:

Replication to Answer.

STATE OF ILLINOIS, *Cook County,* } *ss.:*

In the Superior Court of Cook County, March Term, A. D. 1896.

THE LAKE STREET ELEVATED RAILROAD COMPANY, a Corp., etc., *vs.* THE FARMERS' LOAN AND TRUST COMPANY *et al.* } In Chancery. Gen. No., 172,156.

The replication of The Lake Street Elevated Railroad Company, a corporation, etc., complainant, to the answer of The Farmers' Loan and Trust Company.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the

said answer of the said defendant, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things
62 this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by its said bill it has already prayed.

KNIGHT AND BROWN,
Solicitors for Complainant.

(Endorsed:) 172,156; 3224. Superior court of Cook county. Lake St. E. R. R. Co. *vs.* F. L. & T. Co. *et al.* Replication to ans. of F. L. & T. Co. Filed Mar. 30, 1896. S. D. Griffin, clerk. Knight and Brown, solicitors for complainant.

63 And afterwards, to wit, on the 1st day of April, A. D. 1896, the same being one of the days of the March term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE LAKE STREET ELEVATED RAILROAD COMPANY
vs.
THE FARMERS' LOAN AND TRUST COMPANY ET AL. } 172,156. Bill.

Now, on this day, it is ordered that the injunction heretofore granted in this cause be, and is hereby, vacated and set aside.

And afterwards, to wit, on the 22nd day of April, A. D. 1896, the same being one of the days of the April term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE LAKE STREET ELEVATED RAILROAD COMPANY
vs.
THE FARMERS' LOAN AND TRUST COMPANY ET AL. } 172,156. Bill.

On motion of the solicitor for the defendant The Farmers' Loan and Trust Company, it is ordered that leave be, and is hereby, given the said defendant to file an amended answer herein on or before Saturday, April 25th, A. D. 1896.

64 And afterwards, to wit, on the 28th day of April, A. D. 1896, there was filed in the office of the clerk of said court a certain amended answer, which is in words and figures as follows, to wit:

In the Superior Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD CO., Complainant,
vs.
THE FARMERS' LOAN AND TRUST CO. ET AL., Defendants.
} In Chancery.

Amended Answer of The Farmers' Loan and Trust Company, Defendant.

This defendant, now and at all times hereafter, saving and reserving unto itself all manner of benefits or exception that may or can be had or taken to the many errors, uncertainties, and other imperfections in said bill of complaint contained, for answer thereunto, or to so much and such parts thereof as it is advised it is material to make answer unto, answering, says that:

1. It admits the incorporation of said complainant, the making of said deed of trust of April 7th, 1893; the execution, acknowledgement, and recording of said trust deed; the building by complainant of an elevated railroad, substantially as alleged, and that this defendant had not then nor has it since deposited with the auditor of public accounts any sum *or* money whatsoever.

2. It denies that it has not in all respects complied with the laws of the State of Illinois, and denies that it is obliged by law to deposit any sum of money with said auditor of the State of Illinois, as alleged in said bill, and denies that said complainant did not know at the time of the making and execution of said mortgage
65 that this defendant had made no such deposit, and avers that whether such deposit was made or not was a matter *or* public record and all parties are affected with notice thereof, if the same is in any way material.

3. This defendant denies that at any time since the making of said trust deed it has done any business in the State of Illinois, or that said Burry has at any time or in any way acted as the agent of this defendant or done anything under the provisions of said trust deed further than is hereinafter set forth, and denies that anything so done by said Burry constitutes him the agent of this defendant.

4. This defendant admits that under the terms of said trust deed there were issued 6,500 bonds of one thousand dollars each, as provided thereby, and that certain other bonds in addition thereto have been issued as provided by said trust deed, but denies that any of said bonds were issued or delivered to any person under the direction of said Burry, as this defendant's agent or otherwise.

5. This defendant denies any knowledge concerning any conspiracy or confederation entered into by William Ziegler or any other thing or matter in said bill contained concerning said Ziegler so as to either admit or deny the same, and this defendant therefore calls for proof in regard to each and every such matter.

6. This defendant admits that said Burry, as its counsel, had a

conference on the 27th day of January, 1896, with certain counsel representing the American Trust & Savings bank and said complainant, but denies that at said conference of counsel he was acting as agent, and avers that it was well understood that he was not so acting and that he appeared therein as counsel, and avers that the solicitor who drew the bill of complaint herein knew that
66 said Burry was not acting as agent, although it is so stated in the bill, and this defendant denies that said Burry at that time stated that no demand for action on the part of this defendant had been made other than that made by said Ziegler, and avers that said Burry stated that in considering whether it was proper to file a bill to foreclose said trust deed defendant was not acting in accordance with the request or objection of any faction of bondholders.

7. This defendant admits and also avers that a large part, amounting to over $130,000, of the interest due under the terms of said trust deed on January 1st, 1895, has not been paid; that all the interest falling due under said trust deed on July 1st, 1895, and on January 1st, 1896, has not been paid, and that there is over half a million dollars of unpaid interest due under the terms of said trust deed. This defendant admits that said complainant endeavored to and did borrow some money to pay part of the interest falling due January 1st, 1895, to each party who would turn over the coupons then falling due as security for such advancement and who would consent that the coupons should be so turned over without being paid, thereby simply increasing the indebtedness of said complainant; and this defendant avers that said complainant and said American Trust and Savings bank refused to pay any money to any bondholders who would not turn over the coupons so unpaid, as hereinafter more particularly set forth.

8. This defendant insists that said bill of complaint does not show or set forth any facts upon which is based the allegation therein contained that this defendant intends, in violation of its duty and for the purpose of injuring and destroying the property and assets of complainant, to take possession of said railroad or at-
67 tempt to foreclose said mortgage, and that said allegation in said bill is too indefinite to be answered, and this defendant prays the same benefit of this paragraph of its answer as if it had demurred to said bill of complaint.

9. This defendant further insists that there is no allegation in said bill of complaint that said Northern Trust Company is in any — interested in the subject-matter of this suit, and that said Northern Trust Company is improperly made a party hereto, and this defendant prays the same benefit of this paragraph of its answer as if it had demurred to said bill of complaint.

10. This defendant denies that the owner of 6,574 of said bonds or of any other considerable number of said bonds requested the trustees in said trust deed to take no action whatsoever under said trust deed with reference to the failure of said complainant to pay the interest so in default, and denies that said Northern Trust Company has any right, power, or authority to in any way make such

demand on said trustees. This defendant believes that certain of the bonds secured by said trust deed are owned or controlled by complainant or are held in its interest, and this defendant avers that all of said bonds held by said Northern Trust Company are held by it as collateral security to secure a certain issue of debentures of said complainant, all interest on which has been paid by said complainant as hereinafter set forth; and this defendant denies that the owners of any bonds not so owned or controlled by complainant or held by said Northern Trust Company desire that this defendant should be removed as trustee under said trust deed or that the holders of any such bonds not issued or controlled by complainant have ever signified such a desire, and denies that the Northern Trust Company is the owner of any of said bonds
68 or that it has any authority to request the removal of any trustee under said deed of trust.

11. This defendant avers that at thirty-five minutes after ten o'clock in the forenoon of January 30th, 1896, it exhibited and filed in the circuit court of the United States for the northern district of Illinois, northern division, its bill of complaint against said Lake Street Elevated Railroad Company, The Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, The West Chicago Street Railroad Company, and The American Trust and Savings Bank, wherein it set forth the making of said trust deed by the said Lake Street Company, dated April 7th, 1893, a copy of which is attached to the original bill of complaint herein, and also averred a default in the payment of interest on said bonds secured by said trust deed, and prayed for a foreclosure of said trust deed, the appointment of a receiver of said mortgaged property, an injunction *pendente lite*, and other relief; and thereupon the clerk of said United States court made out, executed, and issued a writ of subpœna or summons in said foreclosure cause, which writ was so issued by said clerk before forty-five minutes after ten o'clock in the forenoon of January 30th, 1896; to a certified copy whereof, to be offered in evidence, this defendant, for greater certainty, refers. Said Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The West Chicago Street Railroad Company were made defendants to said foreclosure bill because they had by grant or lease acquired valuable interests in and to the mortgaged property.

12. On the first day of February, 1896, said American Trust & Savings Bank, the Northwestern Elevated Railroad Company, and the West Chicago Street Railroad Company voluntarily entered their appearance in said foreclosure cause so commenced in
69 said United States court. The summons in said foreclosure cause was served upon said Lake Street Company on the 18th day of February, 1896.

13. This defendant further shows that this cause was commenced in this court and the bill of complaint filed herein on January 30th, 1896, at or after eleven o'clock in the forenoon of said day, and after said bill for foreclosure had been filed in the United States court and process issued thereon that a summons was issued in this

cause, and that said summons has never been served upon this defendant, except by an attempted service made on February 6th, 1896, by delivering a copy thereof to said Burry, which service this defendant insists was ineffective because said Burry was not this defendant's agent, as hereinafter shown, and that no jurisdiction was acquired of this defendant in this cause until it entered herein its general appearance on the 18th day of March, 1896.

14. This defendant insists that by reason of the premises said United States circuit court became duly invested with jurisdiction over the subject-matter of this suit and the necessary parties thereto, and that, as this suit was commenced subsequently to said suit in said United States circuit court, this court has no jurisdiction to entertain this suit or grant the relief prayed in the bill of complaint herein or to in any way stay said proceedings in said United States court or remove this defendant as trustee and thereby attempt to incapacitate it from prosecuting said cause in said United States court.

15. This defendant further shows that after filing its petition and bond herein for the removal of this cause to said United States circuit court on January 31st, 1896, and after the court denied
70 the prayer of said petition it presented a transcript of the record of this cause to said United States court on February 4th, 1896; and thereupon said United States circuit court entered an order directing that this cause be docketed in this court, and said transcript was thereupon filed in said United States circuit court and docketed therein; and thereupon, on February 5th, 1896, said Northern Trust Company, the American Trust and Savings Bank, and the Lake Street Elevated Railroad Company appeared in said United States court and made motions to remand this cause from said United States court to this court, and stated that they wished to press said motions, and thereupon, with the consent of all parties to this cause, said motions to remand were set for hearing on February 18th, 1896. Arguments upon said motions were made by the solicitors of all the parties to this cause, including Messrs. Knight & Brown for said complainants, during the 18th, 19th, and part of the 20th days of February, 1896, and the motions were then taken under advisement by said United States court. On March 16th, 1896, said United States court pronounced its decision and entered an order denying said motions to remand. This defendant also made and entered a motion in said United States circuit court in this cause to dissolve the preliminary injunction granted herein. Said motion was argued on the merits by all of said parties, including said complainant, by its solicitors, and said United States court on April 21st, 1896, entered an order dissolving said injunction, and thereupon, on the same day, said complainant, The Lake Street Company, prayed and was allowed an appeal from the order dissolving said injunction to the United States circuit court of appeals for the seventh circuit, and tendered its appeal bond, which was approved by the court; and this defendant insists that by rea-
71 son of the premises the question of the jurisdiction of said United States court over this cause becaase adjudicated and

all the parties hereto are bound by said order of said United States court denying said motions to remand and retaining jurisdiction of this cause, and, further, that by reason of the premises said complainant is estopped from now insisting that this cause has not been removed to said United States circuit court.

16. This defendant further shows that on February 14th, 1896, the American Trust and Savings Bank filed a demurrer to said foreclosure bill pending in said United States court. Within a few days thereafter the Union Elevated Railroad Company, by Knight & Brown, its solicitors, and the Northern Trust Company also demurred to said foreclosure bill. Thereupon all of said demurrers were by the parties filing the same urged for hearing. On March 16th, 1896, said parties again pressed their demurrers for hearing and asked said United States court to hear said demurrers at that time. Thereupon this defendant took leave to and did file an amended bill of foreclosure in place of said original bill of foreclosure, and the defendants thereto, including said Lake Street Elevated Railroad Company, by their respective solicitors, asked and were allowed time to answer the same, and for greater certainty this defendant refers to a certified copy of said amended bill of foreclosure to be produced on the hearing. This defendant insists that said action of said parties operated as a waiver of any and all objections to the character in which this defendant acted in said foreclosure cause and under the provisions of said deed of trust.

17. This defendant further says that all the bonds issued under the provisions of said trust deed were delivered to said complainant, The Lake Street Elevated Railroad Company, and by it
72 disposed of for value, and by reason of its making said deed of trust to this defendant as cotrustee and by reason of its having executed, issued, and received value for said bonds, it is estopped from now claiming that this defendant is not qualified to act under said trust deed.

18. In the said trust deed it was provided that bonds secured thereby should be issued in addition to the original issue of six million five hundred thousand dollars ($6,500,000) principally for the purpose of procuring right of way and building additional railroad properties, and that such bonds and proceeds thereof should only be issued for that purpose and upon certificates of the president or vice-president and chief engineer of said railroad company. In that connection said mortgage provides as follows:

"To further assure this provision the said trustees, if they deem proper so to do, may appoint an agent of known integrity and business capacity, with full power to dismiss him and appoint another in his stead at pleasure, who shall have the right to attend all meetings of the board of directors, have free access to and from time to time, examine all books of account of the party of the first part, appertaining to the application and expenditure of said proceeds of the sale of all of said bonds issued in excess of said six thousand five hundred (6,500) bonds, and shall make full report thereof to the trustees every three months, and as much oftener as they may, from time to time, require, for the information of the bondholders

under this mortgage, and the railroad company shall pay said agent a reasonable compensation for his services during the time of the construction of said railroad for which additional bonds are desired as aforesaid, not to exceed, however, one thousand dollars ($1,000) per annum."

19. The two trustees under said trust deed, in August, 1894, by a joint letter, appointed said Burry to act under said clause in said trust deed, and, in pursuance of such appointment, he attended one meeting of the board of directors and examined certain books and vouchers to see the application and expenditure of the proceeds of about eight hundred or one thousand of said bonds, and was paid at the rate of one thousand dollars per annum from August,
73 1894, to December 31st, 1895, but he has never been paid anything since that date, and has been notified by said Lake Street Company that it refuses to recognize him as such ap-ointee since that date or to pay him any further salary as such. He has not acted under said appointment since some time prior to December 31st, 1895, and has not received or attempted to collect any compensation as such since that time, and has never at any time, except as in this paragraph recited, in any way represented this defendant or its cotrustee, the American Trust and Savings bank, or ever done anything for this defendant further than, as an attorney-at-law, to attend to business of a professional character sent to him as such attorney-at-law, and for which he had not been paid any salary, but simply charged therefor in the same manner as against other clients.

74 20. The total number of bonds issued and outstanding for value under said mortgage is, to the best information and belief of defendant, 7,574. Said Lake Street Company paid the coupons on said bonds which matured July 1st, 1893, and January 1st and July 1st, 1894. Of the interest coupons maturing January 1st, 1895, attached to said bonds, less than one-third have been paid and cancelled; two-thirds thereof are now in the hands of said American Trust and Savings bank uncancelled, and it is claimed said two-thirds are still outstanding. Default was made by the Lake Street Company in the payment of all interest coupons payable July 1st, 1895, and January 1st, 1896, attached to said outstanding bonds, and said interest coupons still remain unpaid. Demand was duly made for the payment of certain of said coupons as they matured, at the places appointed for the payment thereof, and payment was refused.

21. On December 19th, 1895, George Cleveland caused to be served on this defendant a notice and demand, in writing, addressed to the trustees under said trust deed, and signed by Cleveland as the owner of twenty-one of said bonds and the interest coupons attached thereto. A copy of said notice and demand, marked Exhibit "A," is attached to this answer, and this defendant prays the same may be taken as part hereof.

22. On December 20th said Cleveland caused to be served on your orator a further notice and demand, in writing, of the same general character as said Exhibit "A," and on December 24th, 1895,

said Cleveland, together with thirteen other parties, as owners of 610 of said bonds in all, caused a third notice of the same general character as Exhibit "A" to be served upon this defendant. By said demands and notices of December 20th and 24th said bondholders claimed that the income arising from said mortgaged property was being diverted, and that they would hold this de-
75 fendant responsible for permitting such diversion. At about the same time duplicates of said notices and demands were served on the American Trust and Savings bank.

23. On the maturity of the coupons falling due January 1, 1895, the said American Trust and Savings bank caused to be issued a circular addressed to the holders of the coupons in words and figures following:

"CHICAGO, *Jan.* 1, 1895.

To the holders of coupons hereinafter referred to:

Please take notice that the coupons of the bonds maturing this day of the Lake Street Elevated Railroad Company are taken up by the undersigned, the American Trust and Savings bank, trustee, expressly under the following conditions:

The Lake Street Elevated Railroad Company on Dec. 28, 1894, deposited certain moneys with this bank to meet said interest coupons due Jan. 1, 1895. Other parties now insist that those moneys belong to them, and that said moneys should be applied not toward the payment, but only toward the purchase for them of said coupons. If it be hereafter judicially determined that their position is correct, then the said coupons so maturing Jan. 1, 1895, and taken up by this bank will be turned over to them, as purchasers thereof, uncanceled; otherwise said coupons will be treated as paid and will be canceled by said bank. Unless you consent to the conditions of this notice the undersigned must decline to take up said coupons.

THE AMERICAN TRUST & SAVINGS BANK, *Trustee.*

The undersigned, who is the holder and owner of — dollars of the coupons above referred to, hereby accepts and consents to all of the provisions and conditions of the foregoing notice.

——— ———.

Witness:

——— ———."

24. The amount of money on deposit in said bank to meet said coupons was about one hundred and seventy-eight thousand dollars ($178,000). The holders of about one hundred and sixty thousand dollars ($160,000) of said coupons consented to surrender their coupons on the conditions named in said notice and received their money therefor. The holders of about eighteen thousand dollars ($18,000) of said coupons refused to transfer the same on the
76 terms set out in said circular and were refused payment therefor, and default in the payment of said coupons not so

surrendered under the terms of said circular continued until some time in the month of July, 1895, when certain of said coupons were paid and the remainder of said coupons not so transferred were paid in October, 1895. On January 27, 1896, this defendant was notified by said Lake Street Company as follows: "Since December 31st, the American Trust and Savings bank have been authorized and have cancelled $29,125 of the January 1, 1895, coupons, so that unpaid coupons would be reduced to that extent." Said bank now therefore holds uncancelled said coupons due January 1, 1895, received by it on the conditions of said circular, to the amount of over one hundred and thirty thousand dollars ($130,000), and said uncancelled coupons are claimed to be held by said bank and recognized by said Lake Street Company as unpaid and in default.

25. After said default in payment of said coupons maturing January 1, 1895, said Lake Street Company asked the holders of its said bonds to reduce or scale and exchange their said bonds so as to receive therefor sixty (60) per cent. of the par value thereof in debentures of the Lake Street Company and fifteen (15) per cent. in so-called income bonds to be secured in the manner hereinafter set forth. Said Lake Street Company claimed that unless such readjustment of the bonds was made it would be unable to pay the interest on its bonds, and thereupon said mortgage would be foreclosed, and that said readjustment would be more advantageous to the holders of the bonds than a foreclosure of said mortgage.

26. About February 21, 1895, certain holders of said first-mortgage bonds appointed in writing John R. Walsh, George H. Webster, and A. O. Slaughter their attorneys to carry out such a scheme of reorganization, and said attorneys were authorized to make
77 an agreement for the delivery of the bonds belonging to said bondholders to the Northern Trust Company, as trustee, and providing that such bondholders should receive for their bonds so deposited debentures to be made and issued by the Lake Street Company to the amount of sixty per cent. (60) of the par value of the bonds they deposited and unsecured income bonds to the amount of fifteen per cent. (15) of the face value of the bonds so deposited. For further particulars of said agreement and arrangements this defendant refers to a copy thereof, attached hereto as Exhibit "B," and prays that the same may be taken as a part hereof.

27. The mortgagor having agreed to this arrangement, the holders of a majority of said mortgage bonds signed said agreement and deposited their bonds with said Northern Trust Company. Said Northern Trust Company and said Lake Street Company then made a written instrument, in accordance with the terms of said bondholders' agreement, and the Lake Street Company issued the debenture and income bonds so provided for. Said last-mentioned instrument between said Lake Street Company and said Northern Trust Company was made, as this defendant is informed and be-

lieves, in substantial compliance with the bondholders' said agreement.

28. Prior to the first day of July, 1895, about six million dollars ($6,000,000) of said first-mortgage bonds had been deposited with and were held by said Northern Trust Company under the terms of said agreement and instrument, and a corresponding amount of said debentures and income bonds had been issued by said Lake Street Company in lieu thereof. Said debentures were guaranteed by the Northwestern Elevated Railroad Company, as provided in said agreement, and said Lake Street Company, in consideration of said guaranty, agreed to grant and lease unto said North-
78 western Company, upon certain conditions, a right to use jointly with said Lake Street Company the part of the railroad of said Lake Street Company lying on Lake street between Wabash avenue and a point about Franklin street, where it is intended that such Northwestern Company shall join its tracks with the railroad of said Lake Street Company. The said railroad of said Lake Street Company, on Lake street between Wabash avenue and Franklin street, is nearly half a mile long and constitutes a very valuable and necessary part of the said railroad of said Lake Street Company.

29. On July 1, 1895, when the first installment of interest became due on said debenture bonds, the holders of more than one thousand (1,000) of said first-mortgage bonds, of the par value of more than one million dollars ($1,000,000), had not entered into said reducing or scaling agreement or accepted in place of their said bonds the said debentures and income bonds. Thereupon the interest coupons due on all debentures issued were paid on the date of their maturity, and default was made in the payment of all the coupons becoming due on July 1, 1895, on all of said first-mortgage bonds. Said Lake Street Company, however, claims that said interest due on said debentures was paid by said Northwestern Elevated Company and not by said Lake Street Company. No part of the interest due on any of said bonds maturing on said first day of July, 1895, has been paid, but the coupons therefor, together with said uncancelled coupons due January 1, 1895, have been ever since and still are in default. On or about the 8th day of January, 1896, this defendant received from said Northern Trust Company the following notice in writing, addressed to this defendant and said American Trust and Savings bank:

79 "CHICAGO, *December* 30, 1895.

To the American Trust & Savings bank, Chicago, and the Farmers' Loan & Trust Company, New York, trustees in and under the deed of trust executed by the Lake Street Elevated R. R. Co., under date of April 7, 1893.

GENTLEMEN: The undersigned is the holder of more than six thousand (6,000) of the bonds named in and secured by said trust deed, and respectfully calls your attention to the fact that every right of action, whether at law or in equity, under said trust deed

is vested in you exclusively, and the undersigned hereby states that all of the bonds held by it are outstanding under the language and intent of said trust deed; that none of them have been canceled, paid, or discharged in any part; also, that all of the coupons for the interest upon said bonds maturing on and after July 1, 1895, are held by the undersigned and are unpaid and uncancelled; and the undersigned further expresses to you that all statements which may have been made to you that any or all of the said bonds and coupons so held by the undersigned have been settled or cancelled or have ceased to be outstanding, under said trust deed, are without foundation.

Yours truly, THE NORTHERN TRUST COMPANY,
By BYRON L. SMITH,
President. [SEAL.]

Attest: ARTHUR HEUTLEY, *Secretary.*"

30. On the 1st day of January, 1896, when the coupons evidencing the semi-annual installment of interest due on said debentures and on said first-mortgage bonds became due, the holders of about nine hundred (900) of said first-mortgage bonds of the par value of nine hundred thousand dollars ($900,000) had not surrendered the same and accepted in lieu thereof the said debentures and income bonds in accordance with said proposition of said company. Thereupon said Lake Street Company again made default in the payment of all interest due on its said first-mortgage bonds, and at the same time the coupons due on all of said debentures were promptly paid at their maturity, said Lake Street Company claiming that said debenture coupons were paid by said guarantor, the said Northwestern Elevated Company. Under said indenture under which said first-mortgage bonds are deposited with said Northern Trust Company, said first-mortgage bonds are held by the Northern Trust Company as security for the payment of the said debentures of the said Lake Street Company. Under this scheme and by so keeping outstanding and uncancelled coupons of the bonds secured by said first mortgage, the debt secured by said mortgage is constantly increasing, and as the overdue coupons accumulate the amount of security properly apportionable to the bonds decreases and the security for said bonds is thereby seriously impaired.

80 31. It is against the interest of the said Northwestern Elevated Railroad Company, which claims to have paid the said debenture coupons maturing on July 1, 1895, and January 1, 1896, to have said mortgage foreclosed, for the reason that the undertaking of said Northwestern Elevated Railroad Company to guarantee said debentures is in consideration of the said grants from said Lake Street Company, which will be cut off by any foreclosure of said mortgage, and also by reason of the fact that said Northwestern Elevated Railroad Company has an interest in the grant hereinafter referred to by said Lake Street Company for the joint use by the

Union Elevated Railroad Company of that portion of said Lake Street Elevated railroad extending on Lake street from Wabash avenue to Franklin or Market street for a period of twenty years, which will also be defeated by the foreclosure of said mortgage.

32. This defendant further avers on information and belief that as part of the arrangement by which the said Northwestern Elevated Railroad Company agreed to guarantee the payment of the said debentures it was agreed between the said Lake Street Company and the said Northwestern Elevated Railroad Company that the net income of said Lake Street Company should be applied from time to time to the payment of the interest on said debentures, and that said guarantor should only be called upon to make up any deficiency in paying the same, thereby giving a preference to the holders of said debentures over the holders of said first mortgage bonds who have accepted said debentures. It is claimed by certain of the holders of said first-mortgage bonds that the debenture coupons paid in July, 1895, were paid in whole or in part by said Lake Street Company or with its moneys and not by said Northwestern Elevated Railroad Company, and that, as evidencing such payment, said debenture coupons were cancelled at the
81 time of said payment.

33. During the period of said defaults in the payment of interest said Lake Street Company has also entered into an agreement with the Union Elevated Railroad Company to grant to said Union Elevated Railroad Company the joint use with it of that portion of its elevated railroad extending on Lake street from Wabash avenue to Franklin or Market street for the period of twenty (20) years, the entire consideration for said period being about four hundred and twenty thousand dollars ($420,000), to be paid to said Lake Street Company in advance, and to be applied by it to its own purposes. Said Lake Street Company has already received on account of said rental the sum of one hundred and twenty-five thousand dollars ($125,000), and has used and expended the same, but has not applied any part thereof to the payment of said mortgage indebtedness. The annual report of said Lake Street Company to its stockholders for the year ending December 31, 1895, also shows that there were outstanding on the date of said report bills payable of said company to the amount of $571,500, of which sum $475,000 is in addition to its unpaid coupons. In said annual report of said company it is also stated that said company, notwithstanding its said continuous defaults, has let contracts for the equipping of its railroad with electricity, and that the cost of said electrical equipment is estimated at about $249,410. The equipment of said road with electricity will also involve the sale by the company, at a large reduction on the original cost, of its present locomotive equipment.

82 34. Further answering, this defendant says on information and belief that the holders of over nine hundred of said bonds issued under said trust deed have not agreed to said scaling arrangement or surrendered their bonds or deposited the same with said Northern Trust Company; that of the said bonds, the holders of

which have not assented to said scaling agreement, the following-named persons are the present holders to the following amounts: Samuel H. Harris, 30 bonds; William Ziegler, 400 bonds; George Cleveland, 21 bonds; Effingham H. Nichols, 55 bonds; Wm. M. Van Anden, 50 bonds; Charles Smith, 15 bonds; James B. Ryan, 12 bonds; Wm. R. Peters, 15 bonds; Jere Johnson, Jr., 10 bonds; James V. S. Woolley, 10 bonds; Oliver A. McMahon, 5 bonds; Edward Entwistle, 5 bonds; Lawrence E. Ellis, 4 bonds; Lizzie Wentworth Wright, 5 bonds; Stewart L. Woodford, 5 bonds; and these defendants insist and aver that the persons named are necessary parties to this suit.

35. Further answering, this defendant denies that in violation of its duty and for the purpose of injuring and destroying the property and assets of complainant it intends to or will proceed to take possession of said property and assets or attempt to foreclose said mortgage or trust deed, and, on the contrary, avers that in filing said foreclosure bill (in said United States circuit court) this defendant acted in good faith and in the belief that it was its duty to file said bill, and that it arrived at such belief after a careful investigation of the facts hereinbefore in this answer set forth and other facts appurtenant thereto, and that this defendant is not in any way interested in any of the matters or things in this answer mentioned, save only as trustee under said trust deed.

83 36. This defendant files this answer, protesting, however, that this cause has already been, according to law, removed from this court into the circuit court of the United States for the northern district of Illinois, northern division, and is no longer pending in this court, and without waiving any right arising under said proceedings for said removal.

And now having fully answered said bill of complaint, this defendant prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE FARMERS' LOAN AND TRUST COMPANY,
By RUNNELLS & BURRY, *Its Solicitors.*

STATE OF ILLINOIS, }
County of Cook, } ss:

William Burry, being duly sworn, on oath says that he is one of the solicitors for said defendant, The Farmers' Loan and Trust Company; that he has personally investigated the matters set forth in the foregoing answer and is acquainted with them, and that the matters and things therein stated are true as therein set forth.

WM. BURRY.

Subscribed and sworn to before me this 27th day of April, A. D. 1896.

[SEAL.]

HARRIET M. HILL,
Notary Public.

84 EXHIBIT A.

To the American Trust and Savings Bank of Chicago, Illinois, trustee, and the Farmers' Loan and Trust Company of New York City, cotrustees:

The undersigned, George Cleveland, is the owner of twenty-one of the first-mortgage bonds, of the par value of $21,000, and the unpaid coupons for interest due and to become due on said bonds, issued by the Lake Street Elevated Railroad Company of Chicago, Illinois, and secured by the certain trust deed dated April 7, 1893, executed and delivered by the Lake Street Elevated Railroad Company to you as trustees and cotrustees respectively.

The interest coupons cut from the said bonds of the undersigned, due January 1, 1895, were duly presented for payment at the office of said American Trust and Savings bank, Chicago, as provided in said coupons, bonds, and trust deed. Thereupon default was made in the payment of said interest coupons, and such default continued until about the 22nd day of June, 1895, when payment was made of said coupons.

The undersigned is informed that in like manner the interest coupons cut from others of said bonds to a large amount, due January 1, 1895, were duly presented for payment, and thereupon default was made in their payment, and such default continued until the latter part of July, 1895, when said coupons were paid.

The interest coupons cut from said bonds of the undersigned, due July 1, 1895, were duly presented for payment at the office of said American Trust and Savings bank, Chicago, as provided
85 in said coupons, bonds, and trust deed. Thereupon default was made in the payment of said interest coupons due July 1, 1895, and such default still continues.

The undersigned is also informed that in like manner the interest coupons cut from other of said bonds to a large amount, due July 1, 1895, were duly presented for payment, and thereupon default was made in their payment and such default still continues.

I desire to call your attention to the following facts, which I am advised by counsel are material to your duties as trustees under said trust deed and to my rights as a holder of bonds secured by said trust deed.

When the January coupons came due the holders, including the undersigned, were met with a demand by the mortgagor, the Lake Street Elevated Railroad Company, that they assign their coupons, to be kept alive instead of cancelled. On the refusal of the holders of any of the coupons to assign the same in accordance with this demand, default was made in their payment and such default continued until the latter part of July, 1895, when, after repeated demands by different holders, they were paid.

In the meantime default had been made in the payment of the July coupons, and the company, while paying the January coupons, after about seven months' default, did not pay and has not yet paid the July coupons, and the default in the payment of these coupons

still continues, notwithstanding repeated demands for payment by different holders.

The company has been continuously in default in the payment of interest on its bonds secured by the trust deed to you for the period of over eleven months.

86 Under date of February 21, 1895, an agreement in writing was signed by certain holders of the bonds secured by the trust deed to you, whereby John R. Walsh, George H. Webster, and A. O. Slaughter were appointed attorneys for the signers to enter into an arrangement whereby the bonds of the signers were to be delivered to the Northern Trust Company, as trustee, and the holders were to receive in the place of their bonds the debenture bonds of the mortgagor, the Lake Street Elevated Railroad Company, to the amount of sixty per cent. of the par value of the bonds delivered and unsecured income bonds to the amount of fifteen per cent. of such par value.

The debenture bonds provided for were to draw interest at five per cent. from the 1st day of January, 1895, payable semi-annually on the first days of January and July in each year. It was also provided that the debenture bonds should be guaranteed by the Northwestern Elevated Railroad Company.

It was further provided by this agreement that it was the purpose of the arrangement to permit the railroad company to issue, as against the bonds deposited under it, a negotiable debenture, which should rest as security on the bonds so deposited, and that the lien of the mortgage and the security thereunder for the bonds deposited should remain to the full amount of the face of the bonds and the interest thereon until such time as the debentures might be paid or all surrendered to the trust company for cancellation.

There were also provisions permitting other bondholders to sign the agreement and deposit their bonds from time to time on specified conditions.

87 For the other particulars of this agreement you are referred to the agreement itself, a copy of which will be furnished you on request if you have not already received a copy.

The railroad company having agreed to this arrangement with the signing bondholders, the holders of more than a majority of the bonds which had been issued under the trust deed signed the agreement and delivered their bonds to the trust company. An instrument was then executed by the trust company defining the trust on which the bonds were held, in accordance with the bondholders' agreement, and the debentures and the income bonds provided for were issued by the railroad company.

When the first installment of interest came due on these debenture bonds (July 1, 1895) the railroad company, notwithstanding it was still in default for its January interest on its first-mortgage bonds secured by the trust deed to you, paid the installment of interest on the debenture bonds, leaving the interest coupons on the bonds, in place of which they were issued, uncancelled in the hands of the trust company, and at the same time not only continued in default in the January interest due on the first-mortgage bonds, but

also made default in the payment of the interest due July 1, 1895, on all the mortgage bonds the holders of which had not signed the agreement referred to and accepted the debentures and income bonds in place of their bonds.

As already stated, the railroad company continued in default in the payment of its January interest on the mortgage bonds until the latter part of July, 1895, and still continues in default in
88 the payment of the July interest, notwithstanding repeated demands by different holders both on the company for payment and on you for the enforcement of payment.

Your attention is called to the fact that by the express terms of the trust deed to you the railroad company conveyed not only the railroad, franchises, and other property, but also "all and singular * * * the income, tolls, fares, profits, and advantages belonging to the railroad company, appertaining to or to arise or to accrue from the said railroad and the maintenance and operation thereof, * * * together with all and singular the tenements * * * and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof."

Your attention is also called to the fact that the condition of that mortgage is that the railroad company "shall well and truly pay or cause to be paid to the holders thereof the principal of all the bonds secured or intended so to be, and the interest moneys to become due thereon, respectively, at the time and in the manner specified in the said bonds and coupons."

Your attention is also called to the fact that the railroad and the "income, tolls, fares, profits, etc.," so conveyed to you in trust "for the equal *pro rata* use, benefit, and security of each and every the persons or corporations who may be or become holders of the above-mentioned bonds, numbered from one (1) to the highest number that may be issued, inclusive, without any preference or priority of any one bond over another thereof by reason of priority in the time of issue or nego-tion thereof or otherwise howsoever."

Your attention is also called to the fact that by the ex-
89 press terms of the trust deed the railroad company is only entitled to the possession and use of the property, and "the rents, income, and profits thereof" "until default shall be made by the railroad company, its successors or assigns, in the payment of the principal or interest of the said bonds hereby created, or some of them, or in the performance of some other of the covenants, stipulations or provisions on its part herein contained."

Your attention is also called to the fact that under the express terms of the trust deed, if default is made "in the payment of any interest moneys mentioned in the said bonds and coupons when the same become due and is demanded, whether said default shall have continued for said period of six months or not," you are authorized and empowered to take full possession of the railroad and all the property mortgaged, and "hold, use, manage, maintain and operate said railroad," and "collect and receive all moneys and revenues arising from such management," and "next to the payment *pro rata*

of the interest due and in default," to apply the income to the purposes specified.

Your attention is also called to the fact that by said trust deed the railroad company expressly covenants that "immediately upon the commencement" by you "of any suit or other legal proceedings to obtain possession of the property mortgaged, it will waive service of process, enter its voluntary appearance and consent to the entry of a judgment for the recovery and possession of the property mortgaged and every part thereof."

I am advised by counsel that by the action of said railroad
90 company and the holders of the majority of the mortgage bonds issued under said agreement of February 21, 1895, and the issue of said debentures and said payment of interest thereon and the other facts connected therewith, the holders of said majority of the bonds became and are disabled from exercising the several powers vested by said mortgage in the majority of the bonds outstanding.

I am further advised by counsel that said railroad company has by its action waived the benefit of and abrogated said provisions, and that it is your duty as trustees, irrespective of said provisions, to perform the duties and exercise the powers vested in you by said trust deed "for the equal *pro rata* use, benefit, and security" of all the bondholders, and on default in the payment of interest to take appropriate action to enforce payment and prevent any diversion of the income to other purposes than the equal *pro rata* payment to the mortgage bondholders and otherwise enforce the provisions of said trust deed.

You are hereby notified that, as the holder of twenty-one bonds secured by said trust deed, I shall hold you and each of you to strict accountability for the discharge of the duties imposed on you by said trust deed, and that in the event of the use or other diversion of any of the income of said railroad, after any default in the payment of interest, to other purposes than the payment of the overdue interest on the first-mortgage bonds of said company, or other purposes not authorized by said trust deed, which you could have prevented or can prevent by the performance of any duty imposed on you by said trust deed, whereby the mortgage debt or any part thereof is left unpaid, to my injury as holder of said bonds, I shall hold you and each of you liable therefor.

91 I further demand that you proceed by suit or suits or other appropriate remedy to enforce said trust deed and the rights of the bondholders under the same for the equal benefit of all the bondholders, hereby tendering any evidence that you may require under said trust deed as to my ownership of said bonds and coupons, and also tendering such indemnity or security as shall be satisfactory to you against any costs, expenses, or other liability by reason of the action requested.

Upon the receipt of this notice and demand you will please advise George Cleveland, 175 Park avenue, Orange, New Jersey, or

my attorneys, Messrs. Herrick, Allen & Boyesen, 107 Dearborn street, Chicago, what proof, security, or indemnity you require.

Dated December 19, 1895.

GEORGE CLEVELAND,
Owner of Twenty-one of Said Bonds, of the Par Value of $21,000.

Schedule of Numbers of Said 21 *Bonds.*

Nos. 2069 to 3080, inclusive			12	bonds.
" 3164 " 3167,	"		4	"
" 4581 " 4585,	"		5	"
Total			21	bonds

92 EXHIBIT B.

Whereas, the undersigned are the holders of the number of bonds below set opposite their respective names, issued by the Lake Street Elevated Railroad Company, a corporation under the laws of the State of Illinois, and dated the 7th day of April, 1893, and secured by a mortgage made by the said railroad company April 7, 1893, and recorded May 6, 1893, in the recorder's office of Cook county, Illinois, in Book 4256 of Records, at page 230, and recorded in the office of the secretary of State of Illinois, May 11, 1893, and there recorded in Book 12, at page 266, running to the American Trust & Savings Bank of Chicago, Illinois, and the Farmers' Loan & Trust Company, of the State of New York.

And whereas, said railroad company was unable to pay the interest due upon said bonds January 1, 1895, and it is proposed that the holders of said bonds shall arrange to scale the same so as to make the bonded indebtedness of the said company *will be* able to pay or cause to be paid the interest upon the bonded indebtedness to be so reduced.

Now, therefore, this instrument witnesseth: that the undersigned, each for himself and not for the others, do hereby make, constitute and appoint, and by these presents do make, constitute and appoint John R. Walsh, George H. Webster and A. O. Slaughter, of the city of Chicago, Illinois, the true and lawful attorneys of each of the parties hereto, for and in the name and place and stead of
93 each of the parties hereto, to negotiate with the Lake Street Elevated Railroad Company for the purpose of arranging an adjustment of the said bonded indebtedness.

First. Said attorneys are authorized to agree with the said railroad company upon an arrangement whereby the bonds held by each of the parties hereto may ultimately be taken up on the basis of (60 %) sixty per cent. of the par value of the face of said bonds in debentures, and fifteen per cent. (15 %) of the par value of said bonds in unsecured income bonds.

Second. The Northern Trust Company, a corporation under the laws of the State of Illinois, is hereby made the trustee for the pur-

pose of carrying out and effecting the adjustment of such bonded indebtedness, and all bonds represented and signed for by the parties hereto shall be deposited with the said trust company.

Third. In making such agreement concerning said bonds upon said basis, said attorneys are authorized to arrange for and on our behalf for fifteen per cent. (15 %) in unsecured income bonds of said railroad company, and sixty per cent. (60 %) in debenture obligation- of said railroad company, secured by the bonds deposited with said trust company hereunder, which said debentures so to be issued by said railroad company shall be issued upon the basis of 60 % of the par value of the bonds deposited hereunder, and shall
94 draw interest at five per cent. (5 %) per annum from the first day of January, A. D. 1895, and payable semi-annually on the first days of January and July in each year, and with coupons thereto attached. The lien of said mortgage and the security thereunder for the bonds so deposited shall remain to the full amount of the face of the bonds and the interest thereon, until such time as said debentures may be paid or all surrendered to said trust company for cancellation.

The purpose and intent of this instrument being to permit said railroad company to issue as against the bonds so deposited a negotiable debenture which shall rest for security upon the bonds so deposited, with all the rights which said bonds deposited have under said mortgage, and also to the extent of fifteen per cent. (15 %) to issue the unsecured income bonds above mentioned.

Fourth. Upon the issue of the debentures and income bonds as aforesaid, an agreement shall be made by said railroad company which shall provide:

a. That no additional bonds shall be issued under said mortgage of April 7, 1893, or certified by the trustees under said mortgage for the purpose of paying interest.

b. That no bonds shall be issued hereafter under said mortgage for construction purposes except for the actual cost of such construction, and the par value of all bonds so hereafter issued shall
95 only equal the cost of such construction. Before the issuing of any such bonds for construction said railroad company shall submit to said trustees under said mortgage, contracts, vouchers and statements under oath of the president of the said railroad company, showing the actual cost, which said vouchers and statements shall be subject to the inspection and examination of any bondholder.

c. The principal and interest payable under said debentures as aforesaid shall be guaranteed in writing by the Northwestern Elevated Railroad Company, a corporation under the laws of the State of Illinois, by a guarantee in such form and upon such terms as may be agreed upon by said attorneys and said railroad company.

Fifth. In case this agreement is not signed by the holders of at least three million eight hundred thousand dollars, ($3,800,000) *dollars* par of the bonds now issued under said mortgage on or before the first day of April, A. D. 1895, or in case at least three thousand eight hundred—3,800—bonds are not deposited hereunder, on or before

the first day of April, 1895, then this instrument shall be and become inoperative and the respective bonds shall be returned to the respective depositors thereof.

Sixth. The parties signing this agreement shall not be liable hereunder to any person or persons, or corporation whatsoever, for or on account of any expense or other charge made or incurred in
96 originating or in carrying out the provisions of this power, nor shall the said John R. Walsh, George H. Webster and A. O. Slaughter, or any of them, be liable for any cost or expense hereunder, or in any manner whatsoever, but said attorneys shall require said railroad company in order to make the adjustment as herein provided to pay all the expenses and charges necessary or proper in relation hereto, including all charges of the trustee and necessary attorney fees.

Seventh. The form, terms and time of payment of said debentures and income bonds to be such as said attorneys and said railroad company may be able to agree upon; time of payment not, however, to extend beyond the date of maturity of the mortgage bonds, and the income bonds to draw interest at five per cent. per annum (5 %) from Jan. 1st, 1895, payable only when earned out of net earnings of each current year, beginning Jan. 1st, 1895, over and above all expenses of the operation and maintenance of the lines, property and plants of the company, taxes, insurance and all other fixed charges, including interest on all bonds from time to time outstanding under said trust deed, and said interest not to be cumulative.

Eighth. If all of the bonds and interest coupons at this date issued under said mortgage by said railroad company are deposited with said Northern Trust Company for the purpose of issuing said debentures, then and not before the said trust company may
97 cancel and deliver to said railroad company for destruction forty per cent. (40 %) of the par value of said mortgage bonds, and the coupons therewith, and the remaining sixty per cent. (60 %) shall in such case be held by said trust company as security for said debentures, and said trust company may thereupon deliver to said debenture-holders such number of said sixty per cent. (60 %) of bonds as will equal the par value of such debentures surrendered and canceled, upon the Northwestern Elevated Railroad Company guaranteeing the payment of principal and interest of said sixty per cent. (60 %) of the bonds, interest to be adjusted as of the time of the exchange.

Ninth. The terms and conditions upon which said Northern Trust Company shall accept and execute the trusts in relation to said bonds and debentures shall be expressed in a written instrument between said attorneys, said Lake Street Elevated Railroad Company and said Northern Trust Company.

Tenth. Any party holding any of said mortgage bonds may become a party hereto and have the benefit hereof at any time after said three thousand eight hundred bonds have been signed for and deposited as aforesaid by signing this instrument and depositing his bonds as herein required, provided said party shall so sign and

deposit his bonds within thirty days after said thirty-eight hundred bonds shall be signed and deposited as aforesaid.

98 Eleventh. The deposit of said mortgage bonds with said Northern Trust Company shall pass and transfer to it the full and complete title to the respective bonds in trust for the purposes hereby intended, and in the said instrument of trust to be more fully expressed. Said trust company is to certify in form satisfactory to it the respective debentures which shall be issued in accordance with the intent thereof, as being the debentures entitled to share in the security afforded by said deposit of said bonds, and immediately upon the certification and issue of the respective debentures the legal holders of the debentures from time to time shall be and become entitled to their proportionate share of the security afforded by the whole deposit of bonds, and the original depositors of the respective bonds shall have no further interest in the bonds deposited save and except as they may be holders of debentures; that is to say the security shall follow the ownership of the debentures, and said income bonds shall have no relation to or share in the security furnished by the mortgage bonds deposited.

Twelfth. In case of the death, absence, resignation or inability to act of either of said three attorneys the remaining attorneys, or if they fail to appoint, said Northern Trust Company may appoint a successor or successors to such attorneys and said attorneys shall have power to add two or more additional attorneys to act with them hereunder, and in case of such addition the majority shall govern and control. And the attorneys hereunder named, at
99 their option, extend the time for bondholders to come in hereunder by written notice to said Northern Trust Company, and such published notice as the attorneys may deem necessary.

Thirteenth. The said John R. Walsh, George H. Webster and A. O. Slaughter may do whatever else they may deem necessary or advisable in order to carry out the purpose, spirit and intent of this agreement, and if necessary in order to carry out the purpose hereof, may proceed under the power in said mortgage contained, and use the bonds deposited to foreclose said mortgage, or take such steps or other means that may be necessary in order to secure the intent and purpose hereof, and for such purpose may bring suit or suits as the holders of said bonds and compromise, settle or adjust the same after such suits have begun as they shall deem advisable or necessary in order to carry into effect the intent hereof, hereby giving and granting unto said John R. Walsh, George H. Webster and A. O. Slaughter as full power and authority to do and perform all and every act and thing whatever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as each or all the parties might or could do if personally present at the doing thereof, hereby ratifying and confirming all that our said attorneys shall lawfully do or cause to be done by virtue hereof.

Principal and interest of debentures and income bonds to
100 be payable in gold coin of the United States of the present standard of weight and fineness.
City of Chicago, Feb. 21st, A. D. 1895.

Names.	P. O. address.	Number of bonds.

101 (Endorsed:) 172,156; 3224. Superior court of Cook county. Lake Street Elevated R. R. Co. *vs.* Farmers' Loan & Trust Company. Amended answer Farmers' L. & T. Co. Filed Apr. 28, 1896. S. D. Griffin, clerk. Runnells & Burry.

102 And afterwards, to wit, on the 5th day of May, A. D. 1896, there was filed in the office of the clerk of said court a certain replication, which is in words and figures as follows, to wit:

Replication to Amended Answer.

STATE OF ILLINOIS, } *ss.*
Cook County, }

In the Superior Court of Cook County, —— Term, A. D. 189–.

THE LAKE STREET ELEVATED RAILROAD Company, a Corp., &c., *vs.* THE FARMERS' LOAN AND TRUST COMPANY *et al.*	In Chancery. Gen. No., 172,156; Term No., 3224.

The replication of The Lake Street Elevated Railroad Company, a corporation, etc., complainant, to the amended answer of The Farmers' Loan and Trust Company.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said amended answer of the said defendant, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said amended answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said amended answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and
103 prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

KNIGHT AND BROWN,
Solicitors for Complainant.

(Endorsed:) Gen. No., 172,156. Superior court of Cook county. Lake St. E. R. R. Co. *vs.* F. L. and T. Co. *et al.* Replication to amend. ans. of F. L. & T. Co. Filed May 5, 1896. S. D. Griffin, clerk. Knight and Brown, solicitors for complainant.

104 And afterwards, to wit, on the 4th day of June, A. D. 1896, the same being one of the days of the June term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

105 In the Superior Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD
vs.
THE FARMERS' LOAN AND TRUST COMPANY, THE AMERICAN Trust and Savings Bank, and The Northern Trust Company.

Decree Removing The Farmers' Loan and Trust Company as Trustee under Trust Deed.

Knight & Brown, solicitors for Lake Street Elevated Railroad Company.

Moran, Kraus & Mayer, solicitors for American Trust & Savings Bank.

Dupee, Judah, Willard & Wolf, solicitors for Northern Trust Company.

Runnells & Burry, solicitors for Farmers' Loan and Trust Company.

106 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Pleas before the Honorable John Barton Payne, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the first day, of June, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twentieth.

Present: The Honorable John Barton Payne, judge of the superior court of Cook county; Jacob J. Kern, State's attorney; James Pease, sheriff of Cook county.

Attest: STEPHEN D. GRIFFIN, *Clerk.*

Be it remembered that heretofore, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and ninety-six, the same being one of the days of the June term of the superior court of Cook county, the following, among other, proceedings were had in said court and entered of record, to wit:

107 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD COMPANY, a Corporation Created and Existing under and by Virtue of the Laws of the State of Illinois, Complainant,

vs.

THE FARMERS' LOAN AND TRUST COMPANY, a Corporation Created and Existing under and by Virtue of the Laws of the State of New York; The American Trust and Savings Bank, a Corporation Created and Existing under and by Virtue of the Laws of the State of Illinois, and The Northern Trust Company, a Corporation Created and Existing under and by Virtue of the Laws of the State of Illinois, Defendants. } Bill.

Draft of Decree.

This cause having been brought on this day to be heard upon the bill of complaint filed in this cause by said complainant, The Lake Street Elevated Railroad Company, and the answer and amended answer to said bill of complaint of the said defendant, The Farmers' Loan and Trust Company, and the replication of said complainant to the answer, and amended answer of The Farmers' Loan and Trust Company, and the answer to said bill of complaint of the defendant, The American Trust and Savings Bank, and the answer to said bill of complaint of the said defendant, The Northern Trust Company, and the replication of the said complainant to the said answers of the said defendants, The American Trust and Savings Bank and The Northern Trust Company, and upon the proofs and exhibits herein, oral, documentary and written, taken and heard in open court, and it appearing to the court that all the parties are properly before the court, and that the court has jurisdiction of the subject-matter of the said bill of complaint, and all of the parties hereto, and the court being fully advised in the premises, doth find that the court has jurisdiction of all of the parties hereto, and of the subject-matter hereof, and that all the material allegations of said bill of complaint of said complainant, The Lake Street Elevated Railroad Company, are proved.

And the court doth further find that the Lake Street Elevated Railroad Company is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois; that the said The Lake Street Elevated Railroad Company was organized as a corporation in the month of August, 1892, with a capital stock of five million dollars ($5,000,000), divided into fifty thousand (50,000) shares of the par value of one hundred dollars ($100) each; that in the month of April, A. D. 1893, the capital stock of said The Lake Street Elevated Railroad Company was by due process of law increased to ten million dollars ($10,000,000), consisting of one hun-

dred thousand (100,000) shares of the par value of one hundred dollars ($100) each.

And the court doth further find that on, to wit: the 7th day of April, 1893, the said complainant, The Lake Street Elevated Railroad Company, made, executed and afterwards duly deliverad its certain mortgage or trust deed to the said defendant, The
108 American Trust and Savings Bank, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, as trustee, and the defendant, The Farmers' Loan and Trust Company, a corporation organized and existing under the laws of the State of New York, as cotrustee, and that in and by said mortgage or trust deed the said defendant, The American Trust and Savings Bank, was *was* designated as trustee, and the said defendant, The Farmers' Loan and Trust Company, was designated as cotrustee.

And the court doth further find that after the said complainant, The Lake Street Elevated Railroad Company, had so made, executed and delivered the said mortgage or trust deed as aforesaid, the said mortgage or trust deed was signed and the trust therein and thereby created accepted by said defendant, The American Trust and Savings Bank, on the 3d day of May, 1893, and that the said mortgage or trust deed was signed and the trust therein and thereby created accepted by said defendant, The Farmers' Loan and Trust Company, on the 5th day of May, A. D. 1893.

And the court doth further find that said mortgage or trust deed was afterwards and on the 6th day of May, 1893, duly filed for record in the recorder's office of Cook county, in the State of Illinois, and duly recorded in Book 4256 of Records, at page 230, and that afterwards and on the 11th day of May, 1893, the said mortgage or trust deed was duly filed for record in the office of the secretary of state of the State of Illinois, and duly recorded in Book 12, at page 266.

And the court doth further find that said mortgage or trust deed was and is in words and figures as follows, to wit:

Mortgage.

This indenture, made this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-three (A. D. 1893), between the Lake Street Elevated Railroad Company, a corporation duly organized and existing under the laws of the State of Illinois, hereinafter called the "railroad company," party of the first part, and the American Trust and Savings bank, a corporation duly organized and existing under the laws of the State of Illinois, as trustee, party of the second part, and the Farmers' Loan and Trust Company, a corporation duly organized and existing under the laws of the State of New York, as "cotrustee," party of the third part, said parties of the second and third parts being hereinafter, for convenience, called the "trustees."

Whereas, the railroad company is a corporation duly organized and existing under the laws of the State of Illinois, for the purpose

of constructing, maintaining and operating a railroad from a point at or near the east end of Lake street, in the city of Chicago, county of Cook and State of Illinois, in a westerly direction upon or near said Lake street, and the extensions thereof, to the west line of said Cook county, together with such feeders, loops, switches and branch lines from such point or points in said Cook county as the board of directors of said company may deem advisable; and,

Whereas, the railroad company is engaged in the construction of a part of its main line of railroad lying within the said city of Chicago, and has acquired the right to construct, maintain and operate its railroad upon, along and across various streets and alleys, by virtue of various ordinances duly passed by the city council of said city of Chicago, and said railroad company is about to apply for and obtain permission of said city of Chicago to construct, maintain and operate branch lines of railroad leading from said main line of railroad; and,

Whereas, there is now existing against the railroad company a bonded indebtedness covered by a mortgage or deed of trust upon all its railroads and appurtenances and its property, real and personal, and the railroad company has contracted for the construction and equipment of all that part of its elevated railroad over the
109 route which it has hitherto been authorized by ordinances as aforesaid, to construct, maintain and operate; and

Whereas, it is now necessary for the railroad company to issue its bonds and borrow money for the purpose of redeeming and cancelling said bonded indebtedness and for the purpose of constructing, completing, finishing, improving, operating and equipping its main line of railroad and appurtenances thereto, and also from time to time for the following purposes, viz:

(*a*) In adding to, extending and building additional railroad and branches of said railroad, and acquiring railroads by construction or otherwise at not exceeding eight hundred and fifty thousand dollars ($850,000.00) of bonds per mile for two-track road fully equipped with rolling stock, stations, switches, signal stations and necessary appurtenances.

(*b*) Paying, adjusting or settling claims or suits for damages arising out of the building or operation of said railroad or extensions or branches.

(*c*) Procuring right of way and such other real estate as may be needed by the railroad company in extending, adding to and building branches of said railroad.

(*d*) Paying any interest that may accrue and remain unpaid during the first two years of the operation of the railroad, provided to be constructed in said construction contract after delivery and acceptance of said railroad from the contractors for the same, after applying to the payment of such interest the net earnings of the railroad during the said two years.

(*e*) In case the railroad shall eventually cross the Chicago river or either of its branches, upon its own bridge, not exceeding five hundred thousand dollars ($500,000.00) of bonds for each such bridge and its approaches.

And, whereas, the board of directors of the railroad company with the concurrence of more than two-thirds of the amount of all the stock of the railroad company which has been duly expressed and recorded as required by law, has resolved to borrow money for said purposes, and issue and dispose of its mortgage bonds therefor, and secure the payment of these bonds so to be issued, with the interest thereon, by a first mortgage upon its corporate property and franchises, which shall be a first lien thereon and upon all the real and personal property, rights and franchises relating thereto, now owned and held by the said railroad company, or which may hereafter be owned by it.

110 And, whereas, the board of directors of the railroad company has further resolved, with the like concurrence as aforesaid, that the said bonds shall be executed and issued by the president and secretary of the railroad company under its corporate seal, and the interest warrants all authenticated by and with the name of the treasurer, that the said bonds shall be numbered consecutively from one upwards, each for the principal sum of one thousand dollars ($1,000.00) payable in gold coin of the United States of America of the present standard of weight and fineness, to the bearer or to the registered holder thereof, at the office of the American Trust and Savings bank, in the city of Chicago, or at the office of the Farmers' Loan and Trust Company, in the city of New York, on the first day of July, A. D. 1928, with interest thereon at the rate of five per cent. per annum, payable in like coin semi-annually on the first days of January and July in each year, from January first, 1893, until said principal sum shall be fully paid, upon the presentation and surrender of the coupons annexed to said bonds to evidence the said interest thereon, at the office of said American Trust and Savings bank or at the office of the said Farmers' Loan and Trust Company, the said bonds each to contain the condition, set forth in the form below, and each of said bonds and coupons attached thereto and the trustees' certificate to be endorsed thereon to be substantially in the following form:

No. —. $1,000.00.

UNITED STATES OF AMERICA, *State of Illinois.*

The Lake Street Elevated Railroad Company First-mortgage Five Per Cent. Thirty-five-year Gold Bond.

For value received, the Lake Street Elevated Railroad Company, a corporation created and existing under the laws of the State of Illinois, promises to pay to bearer (or if this bond be registered, to the registered holder thereof) at the American Trust and Savings bank, in the city of Chicago, in the State of Illinois, or at the Farmers' Loan and Trust Company, in the city of New York, in the State of New York, on the first day of July in the year of our Lord one thousand nine hundred and twenty-eight (A. D. 1928), the sum of one thousand dollars ($1,000.00) in gold coin of the United States

of America of the present standard of weight and fineness,
111 and to pay interest thereon in like gold coin at the rate of five per centum per annum from January 1st, A. D. 1893, upon the presentation and surrender at said American Trust and Savings bank or at the Farmers' Loan and Trust Company of the annexed coupons as they severally become due, semi-annually on the first days of January and July of each year until said principal sum shall be fully paid.

Both principal and interest are payable without deduction on account of any taxes or assessments, by whatsoever authority the same may be levied.

This bond is one of a series of bonds of like tenor, date, amount and effect, numbered consecutively from one upwards, all of which, whether issued or to be issued, together with the interest thereon, without reference to the time when said bonds shall be actually issued, are equally secured by a mortgage or deed of trust, bearing even date herewith, made by said railroad company to said American Trust and Savings Bank of Chicago, Illinois, as trustee, and the Farmers' Loan and Trust Company of New York City, as cotrustee, conveying all and singular its railroad and appurtenances, its real and personal property, rights of property and franchises now owned or which may be hereafter acquired by said railroad company, as more particularly mentioned and described in said mortgage or deed of trust. Said bonds issued and to be issued by said railroad company, its successors and assigns, are issued subject to and in accordance with the terms and conditions of said mortgage or deed of trust; the amount of bonds to be issued is limited as provided in and by said mortgage or deed of trust.

Upon default in the payment of any interest on any of said bonds the principal of said bonds may be made due and payable as provided in said mortgage or deed of trust.

It is agreed by the holder of this bond that no recourse shall be had for the payment of this bond, or the indebtedness evidenced thereby, or the interest thereon, or any part thereof to the individual liability of any stockholder, or officer of the said railroad company, such liability being waived, and by accepting this bond each successive holder assents to this provision.

This bond may be registered on the books of said railroad company at its financial agency in Chicago or in New York, and
112 such registration noted thereon, after which no transfer thereof shall be valid except on said books, until after registered transfer to bearer. The annexed coupons shall always be transferable by delivery.

This bond shall not be obligatory and valid until the certificate endorsed hereon has been signed by said trustee and cotrustee under said mortgage or deed of trust, or their successors.

In witness whereof, the said The Lake Street Elevated Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by its secretary, and this bond to be signed by its president, and has attached hereto coupons authenticated by the

fac-simile of the signature of its treasurer, this seventh day of April, one thousand eight hundred and ninety-three (A. D. 1893).

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By —— ——, *President.*

Attest: —— ——, *Secretary.*

(*Coupon.*)

On the first day of ——, A. D. —, the Lake Street Elevated Railroad Company will pay to the bearer, at the American Trust and Savings bank, in the city of Chicago, or at the Farmers' Loan and Trust Company in the city of New York, twenty-five dollars ($25.00) in United States gold coin, for six months' interest on its first-mortgage bond No. —, without deduction for taxes as in said bond expressed.

—— ——, *Treasurer.*

(*Trustee's Certificate.*)

This bond is hereby certified to be one of the series of bonds described in the within-mentioned mortgage or deed of trust.

THE AMERICAN TRUST AND SAVINGS BANK, *Trustee,*
By —— ——, *President.*
THE FARMERS' LOAN AND TRUST COMPANY, *Cotrustee,*
By —— ——, *President.*

113 And, whereas, the board of directors of the railroad company with the concurrence of more than two-thirds of its stockholders aforesaid, has resolved to secure the payment of the said bonds so to be issued with the interest thereon, according to the tenor and effect of said bonds and coupons, by the execution of this mortgage or deed of trust.

Now therefore, this indenture witnesseth, that to secure the payment of the said bonds and all moneys payable thereunder to the amount issued or to be issued as hereinafter mentioned, and in consideration of the premises, and of one dollar lawful money of the United States of America to the railroad company by the trustees, at or before the ensealing or delivery of these presents, in hand paid, the receipt whereof is hereby acknowledged, the railroad company hath granted, bargained, sold, remised, released, aliened, enfeoffed, conveyed, confirmed, assigned, transferred and set over, and by these presents, doth grant, bargain, sell, remise, release, alien, enfeoff, convey, confirm, assign, transfer and set over unto the said parties of the second part and their successors and assigns forever, all and singular all the right, title, interest, claim or demand whatsoever, which the railroad now has or is entitled to, or which it shall or may at any time hereafter acquire or become entitled of,

in or to, all and singular the railroad and railroads of the party of the first part constructed or now being or hereafter to be constructed. The said road now being constructed being about seven and one-half miles, or thereabouts, in length, in all its branches from its main lines, and extending from Market street in the city of Chicago, in the county of Cook and State of Illinois, along Lake street to West Fifty-second street in said city, with a loop beginning and ending at said Market street. Also any and all branches and extensions thereof, which are or may hereafter be constructed, or acquired, or authorized to be constructed or acquired. Also all the lands, tenements, and hereditaments acquired or appropriated, or which may hereafter be acquired or appropriated for the purpose of a right of way or for other purposes, for said railroad or railroads, and all the easements or appurtenances thereto belonging, or in anywise appertaining, and all railroads, sidings, turnouts, ways, and rights of way, depot grounds, tracks, rails, bridges, viaducts, culverts, fences, depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, warehouses, machine shops, workshops, super-
114 structures, erections and fixtures and other structure, with the improvements thereon, whether now held or hereafter at any time acquired for the use of said railroad or railroads or branches thereof, or in connection therewith or the business thereof; and with all the piers, foundations, columns, girders, trestles, sleepers, rails, telegraph, telephone and signal devices and other members and appliances of or connected with said railroad or belonging thereto, or used or provided, or intended to be used for the same, and all the engines, boilers, cables, locomotives, motors, tenders, passenger cars, freight cars, and other cars, rolling stock and equipments of or appertaining to, or used in connection with the said railroad, whether now owned or hereafter acquired by said railroad company, and all tools, machinery, apparatus, fuel, materials and supplies whatever, whether for or in connection with such railroad itself or the motor power, rolling stock or equipment thereof, or for workshops, machine shops or other buildings, or construction or repairs of any kind now or hereafter belonging to or provided for, or intended to be used for or in connection with said railroad, or for the construction, operation or maintenance thereof. Also all and singular the franchises, licenses, permits and privileges, permits and privileges from any governmental or municipal authority, and all powers, benefits, rights, immunities, income, tolls, fares, profits and advantages belonging to the railroad company, appertaining to or to arise or to accrue from the said railroad and the maintenance and operation thereof, whether the same are now owned or possessed, or shall be hereafter acquired by the said railroad company, including all the franchises, power, rights and privileges pertaining to said railroad, conferred upon said railroad company in and by any ordinances which it now has from the city of Chicago, or which may be hereafter conferred upon it in any manner soever; together with all and singular the tenements, hereditaments and appurtenances to the said railroad company, and other property and premises hereby mortgaged or expressed, or intended

so to be, or any part thereof, belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity of the railroad company of, in and to the
115 same, and every part and parcel thereof, with the appurtenances as fully and completely as if the said railroad were at the date hereof fully constructed, completed and equipped.

To have and to hold, all and singular the above-described premises, property, rights, franchises and appurtenances unto the said parties of the second part, their successors and assigns forever, to the only proper use and behoof of the parties of the second part, their successors and assigns, in trust, nevertheless, for the equal *pro rata* use, benefit and security of each and all and every the persons or corporations who may be or become holders of any of the above-mentioned bonds, numbered from one to the highest number that may be issued, inclusive, without any preference or priority of any one bond over another by reason of priority in the time of issue or negotiation thereof or otherwise howsoever, and for the uses and purposes herein declared and expressed.

Provided, however, and these presents are upon the express condition that if the railroad company, its successors or assigns, shall well and truly pay or cause to be paid to the holders thereof, the principal of all the bonds secured or intended so to be, and the interest moneys to become due thereon respectively, at the time and in the manner specified in the said bonds and coupons, without deduction on account of taxes or assessments, by whatsoever authority the same may be levied, and according to the true tenor and effect, and shall keep and perform all of the covenants, agreements and stipulations on its part herein contained, then these presents and the trusts hereby created, and all the estate, right, title and interest hereby vested in the said trustees, their successors — assigns, in the trust, shall cease and determine as fully as if this mortgage had never been executed, and in that case the said parties of the second part and their successor or successors in the said trust, on demand by said railroad company, and the cancellation of the bonds and coupons hereby secured, shall execute and deliver to it all such instruments as may be necessary to discharge and cancel this mortgage.

And, provided further, that until default shall be made by the railroad company, its successors or assigns, in the payment of the principal or interest of the said bonds hereby created, or some of them, or in the performance of some other of the covenants, stipulations and provisions on its part herein contained, the railroad company shall have and be entitled to the possession, manage-
116 ment, operation, use and enjoyment of the property and franchises hereby mortgaged, and the rents, incomes and profits thereof.

It is hereby covenanted and agreed by and between the parties hereto, and the railroad company, party of the first part, hereby covenants, promises and agrees to and with each of the persons and

corporations, firms and partnerships who may become the holders of said bonds and coupons, or any of them, as follows, to wit:

First. That, except as hereinafter provided, the total issue of said bonds secured hereby shall be limited to six thousand five hundred (6,500) bonds, for the principal sum in the aggregate of six million five hundred thousand dollars ($6,500,000), and that, except as hereinafter provided, no bonds in addition to said six million five hundred thousand dollars ($6,500,000) shall be certified and delivered by the trustees.

The said six thousand five hundred (6,500) bonds are to be used and disposed of as follows, to wit:

One thousand (1,000) bonds for the principal sum in the aggregate of one million dollars ($1,000,000) are to be used for the purpose of repaying or retiring the eight hundred and twelve (812) six per cent. bonds of one thousand dollars ($1,000) each, heretofore issued by the Lake Street Elevated Railway Company, for the principal sum in the aggregate of eight hundred and twelve thousand dollars ($812,000), and said one thousand (1,000) bonds secured hereby are to be reserved by the trustees in its possession and certified and delivered only in exchange for or to retire or pay a proportionate number of said six per cent. bonds of said elevated railway company; that is to say, whenever any of said six per cent. bonds now outstanding be paid or retired, they shall be canceled, and, thereupon, the trustee shall certify and deliver to the company, or its order, a proportionate number of the said one thousand (1,000) bonds hereby secured and reserved as aforesaid, which bonds may then be used by the said company for its corporate purposes in the discretion of its board.

Five thousand one hundred and fifty (5,150) of said bonds hereby secured, for the principal sum of five million one hundred and fifty thousand dollars ($5,150,000), or the money derived from the sale thereof, are to be used to complete and acquire that part of the railroad of the said company which extends from Market street
117 west to West Fifty-second street, in the city of Chicago, and also the loop beginning and ending at said Market street, as provided by ordinances passed by the city council of the city of Chicago, November 24, 1890, granting the right to construct said railroad or such work as may be substituted for said loop.

Three hundred and fifty (350) of said bonds, for the principal sum of three hundred and fifty thousand dollars ($350,000), are to be used for the lawful purposes of said company in the discretion of the board of directors.

The said five thousand one hundred and fifty (5,150) bonds and said three hundred and fifty (350) bonds are to be certified and delivered by the trustee on the order of the board of directors or the executive committee of the company. Bonds may be issued in addition to said six thousand five hundred (6,500) for the following purposes only:

(*a*) In adding to, extending and building additional railroad and branches of said railroad and acquiring railroads by construction or otherwise, at not exceeding eight hundred and fifty thousand dol-

lars ($850,000) of bonds per mile for a two-track road fully equipped with rolling stock, stations, switches, signal stations and necessary appurtenances.

(*b*) Paying, adjusting or settling claims or suits for damages arising out of the building or operation of said railroad or extensions or branches.

(*c*) Procuring right of way and such other real estate as may be needed by the railroad company in extending, adding to and building branches of said railroad.

(*d*) Paying any interest that may accrue and remain unpaid during the first two years of the operation of the railroad, provided to be constructed in said construction contract, after delivery and acceptance of said railroad from the contractors for the same, after applying to the payment of such interest the net earnings of the railroad during the said two years.

(*e*) In case the railroad shall eventually cross the Chicago river or either of its branches upon its own bridge, not exceeding five hundred thousand dollars ($500,000) of bonds for each such bridge and its approaches.

Second. Said bonds to be issued in addition to the six million five hundred thousand dollars ($6,500,000) of bonds are only to be issued by resolutions or order of the board of directors of the railroad company, that additional bonds are required for the purposes hereinbefore set forth, and the proceeds from the sale of said bonds shall only be used for the purposes therein set forth and for no other. The certificate of the president or vice-president and chief engineer of the railroad company as to the existence of the facts necessitating the issue of said additional bonds for the purposes aforesaid, together with certified copies of the resolution or order of the board of directors aforesaid, shall be furnished to the trustee, and written orders, copies, resolutions and certificates shall in each and every case be sufficient and conclusive evidence to said trustees to a statement therein made and contained, and shall duly protect the trustees in respect of a certificate and delivery of any of said bonds thereunder, and no duties shall be imposed on the trustees to look behind the same or any thereof before certifying and delivering bonds thereunder. To further assure this provision the said trustees, if they deem proper so to do, may appoint an agent of known integrity and business capacity, with full power to dismiss him and appoint another in his stead at pleasure, who shall have the right to attend all meetings of the board of directors, have free access to, and from time to time, examine all books of account of the party of the first part, appertaining to the application and expenditure of said proceeds of the sale of all of said bonds issued in excess of said six thousand five hundred (6,500) bonds, and shall make full report thereof to the trustees every three months, and as much oftener as they may, from time to time, require, for the information of the bondholders under this mortgage, and the railroad company shall pay said agent a reasonable compensation for his services during the time of the construction of said railroad, for

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which additional bonds are desired as aforesaid, not to exceed, however, one thousand dollars ($1,000) per annum.

Third. The company shall keep an agency in the city of New York while said bonds are outstanding for the payment of the principal and interest thereof, and shall keep at said agency books on which the transfer of any bond shall, upon request, be registered, without expense to the holder. Each registration of a bond shall be noted thereon, after which no transfer thereof can be made except on said books, until after registered transfer to bearer, when the bond will again become transferable by delivery until again registered in like manner in the name of the holder. The trustee shall have access to the said books at all reasonable times, and
119 upon request in writing, shall have a list of registrations shown thereon at any specified date. For the purpose of administering the trust created by this mortgage the person in whose name any bond is registered on said books shall be taken to be the owner thereof. The coupons annexed to any bond issued hereunder, whether the bond be registered or not, will always be transferable by delivery.

Fourth. The railroad company covenants and agrees that so long as it shall hold possession and enjoy the property and franchises hereby mortgaged or expressed or intended so to be, it will pay and discharge all taxes, assessments and other governmental charges levied or imposed thereon during the continuance of this mortgage, that it will not suffer any lien superior to the lien hereby created to attach to said property or franchises or to any part thereof; that it will not permit or suffer any waste thereof; that it will keep and maintain the property hereby mortgaged in good order and condition; that it will keep all property hereby mortgaged, liable to be destroyed by fire, reasonably insured, and in case of destruction by fire, all insurance money shall be promptly applied to replace such property as may be destroyed or to the purchase of other property needed for the maintenance or operation of said railroad, and such replaced property shall immediately become subject to this mortgage. Such insurance shall be effected in companies satisfactory to the trustees, the policies to be delivered to and kept by the trustees, and to be made payable to the trustees or their successors. The trustees, however, shall be under no obligation to determine the amount of such insurance.

Fifth. If default shall be made in the payment of any interest money mentioned in the said bonds or coupons, or any or either of them, when the same becomes due and is demanded, and if such default shall continue for a period of six months after such demand and no extension thereof shall be granted by the holders thereof, the trustees, or their successor or successors in the trust hereby created may, if thereunto requested in writing, under seal, by the holders of one-quarter in interest of the said bonds then outstanding, and shall, if thereunto requested in writing, under seal, by the holders of a majority in interest of said bonds then outstanding, declare the principal of all the bonds hereby secured then outstanding to be and the same shall thereupon become immediately due and

120 payable, anything contained in said bonds or herein to the contrary notwithstanding.

Sixth. If default shall be made in the payment of any interest moneys mentioned in the said bond and coupons, or any or either of them, when the same becomes due and demanded, whether such default shall have continued for the said period of six months or not, the trustees may and upon the request in writing by the holders of a majority in interest of the said bonds then outstanding, and upon being indemnified to their satisfaction for their expenses and liabilities, shall enter into and take full possession of said railroad, and of all property hereby mortgaged or expressed, or intended so to be, and hold, use, manage, maintain, and operate said railroad by such agent and managers as such trustees may appoint; collect and receive all moneys and revenues arising from such management and apply the same to the expenses of the trustees in the performance of the trust, including a reasonable compensation for their own services, the services of their counsel, attorneys, agents and other servants and next to the maintenance, management and operation of the said railroad and of the property belonging thereto, hereby mortgaged, including the payment of taxes, assessments, and other government charges, damages and such useful additions, alterations or repairs to the mortgaged property or any of it as the trustees may think proper *or* to be made and next to the payment *pro rata* of the interest due, and in default of said bonds. In case all the said payments shall have been made in full and no suit to foreclose this mortgage shall have been begun, the trustees after making such provisions as to them may seem advisable for the payment of the next semi-annual installment of interest to fall due, shall restore to the railroad company, its successors or assigns, the possession of the premises hereby mortgaged. This power of entry may be exercised as often as occasion therefor shall arise in the judgment of the trustees pending this trust, and the trustees may, so long as any interest remains in default, continue to exercise the power herein granted for such period or periods as they may deem expedient, unless and until the holders of a majority in interest of the bonds secured hereby, then outstanding, shall otherwise in writing request.

Seventh. The provisions contained in article fifth of this mortgage shall not be construed to preclude the trustees or their suc-
121 cessors from enforcing any appropriate remedy against the railroad company or its property and franchises hereby mortgaged by foreclosure or otherwise.

If default shall be made in the payment of principal or of any interest moneys mentioned in said bonds or coupons, or any or either of them, or any part thereof, when the same becomes due and is demanded, or in the performance of any covenants, promises or agreements on the part of the railroad company herein contained, and if such default shall continue for a period of six months, the trustees may, in their discretion, upon being requested in writing by the holders of a majority in interest of said bonds outstanding, and upon being indemnified to their satisfaction against costs and

expenses which may be incurred by acting in pursuance of such request, shall either after entry as hereinbefore provided, or without such entry, proceed by suit or suits at law or in equity, as the said trustees may be advised, to enforce payment of the said bonds and to foreclose this mortgage, and to sell the railways, lands, premises, franchises, rights, appurtenances and property of whatsoever kind or nature, and wheresoever situated, hereby conveyed, under the judgment or decree of a court or courts of competent jurisdiction. In case the trustees shall proceed by suit or suits at law, or in equity, after default as above provided in said trust deed, shall be entitled to have the premises, franchises, rights, privileges and property hereby granted and conveyed, or intended so to be, sold at judicial sale under the order of a court or courts of competent jurisdiction, for or towards the satisfaction of the principal or interest or both, due and owing upon the bonds then outstanding, issued under or entitled to the benefits of the security of this mortgage, and for the enforcement of the rights, liens and securities of the trustees and the bondholders, and shall be entitled pending any such suit or proceedings, to a receivership of such railways, lands, premises, franchises, rights, appurtenances and property of the fares, freights, tolls, earnings, revenues, issues, profits and income thereof.

And the said railroad company doth for itself, its successors and assigns, hereby further covenant and agree by and with the trustees, that at and immediately upon the commencement, by the trustees, of any suit or any other legal proceeding to obtain possession of the premises hereby mortgaged and conveyed upon the default in the performance of any of the covenants herein contained, the said
122 railroad company, its successors and assigns, shall and will severally, waiving the issue and service of process, enter their voluntary appearance in such suit or proceeding and consent to the entry of a judgment for the recovery and possession of said premises and every part thereof, and that at and upon the commencement by the trustees of any suit or proceedings upon default in the performance of any of the covenants herein contained, for the foreclosure of this mortgage, the railroad company, its successors and assigns, shall and will severally, waiving the issuance and service of process, enter their voluntary appearance in such suit or proceeding and consent to the appointment of a receiver of said property, and the tolls, income and revenue thereof for the sole benefit of the holders of the said bonds secured hereby.

Eighth. Every holder of the bonds secured hereby accepts the same subject to the express understanding and agreement that every right of action, whether at law or in equity under this indenture, is vested exclusively in the trustees, and under no circumstances shall the holder of any bonds or coupons, or any number of such holders, have any right to institute any action at law upon any coupon or coupons, or otherwise, or any suit or proceedings in equity or otherwise, under this indenture, for the purpose of enforcing any payment, covenant or remedy herein, or in said bonds contained, or to foreclose this mortgage, except in case of refusal on the part of the trustees to perform any duty imposed on them by

this indenture in respect to such payment, covenant, remedy or foreclosure after demand by a holder or holders of such bonds or coupons, and the production of such bonds or coupons by the holder thereof to the trustees, or the furnishing by such holders of other evidence satisfactory to the trustees that they are such holders, and the giving to the trustees of an indemnity satisfactory to them securing them against liability by reason of the action requested, but no inaction by said trustees upon any such request shall be deemed a refusal until after the expiration of a reasonable time for the consideration thereof by said trustees.

In every case in which the trustees are authorized or required under any provision of this instrument to take any action upon the request of the holders of said bonds, the trustees shall have the right to require the person or persons presenting such request
123 to furnish proof as to the ownership of the bonds represented by him or them by the production of said bonds, or by affidavits or other evidence satisfactory to the trustees, and if such proof be so required, the said request will be without effect until such proof shall be furnished.

Ninth. Upon any sale of the property and franchises hereby mortgaged, or any part thereof, the purchaser in making payment therefor shall be entitled, after paying in cash so much as shall be necessary to cover the costs and expenses of the sale and of the proceedings incident thereto, and all other charges that may be decreed to be paid in cash, to appropriate and use towards the payment of the remainder of the purchase price any of the bonds or coupons issued hereunder and entitled to participate in the proceeds of such sale, reckoning each bond or coupon so appropriated and used at such sum as shall be payable thereon, out of the net proceeds of the sale; and proper receipts shall thereupon be given to the holders of such bonds or coupons for the amount so payable thereon, and the bonds or coupons, if the net proceeds of the sale shall be sufficient to pay them in full, shall be delivered up to the person making the sale under decree of the court for cancellation; or if the proceeds of the sale shall not be sufficient to pay such bonds or coupons in full, then proper endorsements shall be made thereon of the amount so paid, and they shall then be returned to the holders.

Tenth. The trustees shall permit such necessary changes to be made in the line of said railroad as may be in their judgment advisable and advantageous to be made, and any property acquired by the railroad company in consequence of such changes shall immediately become subject to this mortgage.

Eleventh. While the railroad company shall be in possession of the mortgaged premises, and there shall be no existing default in the payment of principal or interest of any of said bonds, or in the performance of any of the stipulations, conditions and provisions on the part of the railroad company in this mortgage contained, the railroad company, its successors and assigns may, from time to time, sell or otherwise dispose of, free and clear from the lien of this mortgage, any rolling stock, equipment or other personal property held or intended for use upon the said railroad which shall have

become worn out or otherwise unsuitable for use, or, whenever it shall be intended to replace the same by other rolling stock
124 or equipment or personal property; provided, however, that such sale or disposition shall not impair or reduce the efficiency of the rolling stock, equipment or other personal property required for the operation of the said railroad, and all rolling stock, equipment and personal property which shall, from time to time, be acquired for use upon or in connection with said railroad by the said railroad company, its successors or assigns, with the proceeds of any such sale or disposition or otherwise, shall be subject to the lien of this mortgage.

While the railroad company shall be in possession of the mortgaged premises and there shall be no existing default as aforesaid, the trustees shall have full power and authority, in their discretion, upon the written request of the railroad company, and upon the delivery to them of an attested copy of the resolution of the board of directors of the railroad company authorizing the same to release or convey any land or other real property hereby mortgaged, which in the judgment of the board of directors of the railroad company are not required for the purpose of constructing, maintaining or operating the said railroad, and which the railroad company shall in good faith sell and desire to have released and conveyed in order to give good title to the purchasers, and all the proceeds arising from the sale of such land or real property shall either be applied to the purchase of other property for the railroad company, which shall immediately become subject to this mortgage and which in the judgment of the trustees is of equal value and benefit to the railroad company or at the option of the trustees, all the proceeds arising from the sale of any such lands or real property shall be paid over to them to be used by said trustees in the purchase of one or more of the bonds hereby secured in the following manner:

Upon the receipt by the said trustees of any of such proceeds, they shall advertise in a newspaper published in the city of New York, State of New York, and in the city of Chicago, Illinois, for four successive weeks, for proposals for the sale to them of bonds secured by this mortgage, and upon the coming in of such proposals they shall apply such proceeds to the purchase of such bonds at the lowest price at which the same can be obtained.

In case no proposals shall be so received, or in case the proposals so received be not for an amount of bonds sufficient to ex-
125 haust all of said proceeds in the hands of the trustees, the trustees shall apply said proceeds or the balance thereof not applied to the purchase of bonds secured hereby upon the New York stock exchange, or Chicago stock exchange, or at the market price thereof.

All bonds and coupons purchased by the said trustees under the foregoing provisions shall be forthwith canceled by them and surrendered to the railroad company and shall not again be issued. Provided, always, however, that no portion of the main line or branches of said railroad, or any part of the principal depots, stations or terminal facilities or other property which, in the judgment

of the trustees, is or may be essential to the due operation of said railroad, shall be so released unless replaced by property which, in the judgment of the said trustees, is of equal value and of equal benefit to the efficient operation of said railroad. Provided that the trustees may consent to the release of that part of the railroad within the South division of the city of Chicago, upon such terms and conditions as they may impose.

The said trustees shall not be subject to any liability to any person or persons by reason of any act done or performed in good faith under the provisions of this article.

Twelfth. The railroad company further covenants that it will not apply for, or avail itself of any injunction or stay of proceedings, or plead, or in any way take advantage of any extension law, stay-law, valuation law, redemption law, appraisement law, or any other law, whether now in force, or which may hereafter be in force, which may in any way alter, impair or impede the rights or remedies of the holders of the bonds issued hereunder or of the trustees, or which shall affect or change the time, place, means or mode of perfecting or enforcing such rights or remedies.

Thirteenth. The railroad company for itself, its successors and assigns, hereby further covenants and agrees to and with the trustees and their successors in trust, and to and with the respective persons and corporations who shall, at any time — the holders of the said bonds hereby secured, or any of them, that the railroad company, its successors and assigns, shall and will at any time, and from time to time thereafter, make, do, execute and deliver all such further acts, deed- and things, as shall be reasonably advised, devised or required to effectuate the intention of these presents, and to secure and confirm to the said trustees and their successors, or succes-
126 sors in trust, all and singular the property and estate, real and personal, and the rights, privileges and franchises hereinbefore described, and hereby intended to be mortgaged and conveyed, and so render the same, and especially such portions thereof as shall be hereafter acquired by the railroad company, its successors and assigns, available for the security and satisfaction of the said bonds, according to the intent and purposes herein expressed.

Fourteenth. Each of the bonds hereby secured is issued upon the express condition, to which each successive holder thereof expressly assents by receiving the same, that no stockholder or officer of the company shall be held personally liable to pay any part of the principal or interest of said bond or the indebtedness evidenced thereby, by virtue of any law now in force or hereafter enacted, and each successive holder of any such bond, by receiving the same, expressly waives any right he may now or hereafter have to proceed against the stockholders or officers of the company for the payment of said bonds or the consideration thereof, or any part thereof, and agrees to have recourse for such payment only against the company and the property thereof.

Fifteenth. It is understood and agreed that the trustees shall not, nor shall either of them, be required to take any step in the execution of the trusts hereby created, or in the enforcement of their

rights or powers hereunder, if in their or his opinion such action shall be likely to involve them or either of them in expense or liability, unless one or more of the bondholders shall, as often as required by the trustees, give them reasonable indemnity against the same, anything herein contained to the contrary notwithstanding, and that the trustees and their agents, attorneys and counsel shall be entitled to a reasonable compensation for all services rendered in connection with the trusts hereby created, or in pursuance of the provisions of this indenture, the railroad company agrees to pay to the trustees such compensation, and also all expenses reasonably incurred by the trustees hereunder, and the trustees shall have a lien therefor on the mortgaged property and the proceeds thereof.

It is further understood and agreed by and between the parties hereto, that the trustees shall not be answerable for any default or miscarriage of any agent or attorney by them or either of
127 them appointed hereunder, if such agent or attorney was selected with reasonable care, nor for the default of each other, nor for any error or mistake of judgment made by them or either of them in good faith, but shall only be liable each for its own individual willful misconduct in the execution of said trusts; and it is further understood and agreed that the trustees are not required to insure any of the property hereby mortgaged unless placed in funds wherewith to effect such insurance, nor is either of them to see to the recording or filing of this indenture as a mortgage or deed of real or personal property, or to take any action, or to do any act made requisite by statute for protecting, perpetuating or keeping good the lien of these presents upon the whole or any part of the hereby mortgaged railroad, real and personal property, fixtures, machinery and premises, save in their discretion, but the railroad company, its successors and assigns, shall and will, from time — do all things needful in that behalf.

The trustees, or either of them, may resign and thereby become discharged from the trusts hereby created, by notice in writing to be given to the railroad company and published once a week for two successive weeks in a newspaper in the cities of Chicago and New York, at least two months before such resignation shall take effect, but such resignation shall take effect immediately upon the appointment of a new trustee herein, in place of the trustee resigning, if such new trustee shall be appointed before the time limited by such notice.

In case at any time hereafter either of the said trustees or any trustee hereafter appointed shall die or resign or be removed, or otherwise cease to act, or become incapable of acting, the successor or successors of such trustee shall be appointed by the surviving or remaining trustee by an instrument in writing subscribed by it, or if there be none, then by the railroad company, by an instrument under the seal of said company, or in case no such appointment shall be made within thirty days after a vacancy occurs, then by any judge of the United States circuit court for the seventh circuit upon the application of the holders of not less than one million dollars of principal of the said bonds then outstanding; provided,

nevertheless, and it is hereby agreed and declared that in case the holders of a majority in interest of said bonds then outstanding be dissatisfied with any trustee or trustees so appointed, a new trustee or trustees to be nominated by the holders of a majority in
128 interest of said bonds then outstanding shall be appointed in its or their place by a judge of said court upon application by the holders of such majority and eight days' written notice thereof given to said railroad company.

Any new trustee or trustees appointed hereunder shall execute, acknowledge and deliver to the remaining trustee or to the trustees last in office, or if there be none, to the railroad company, an instrument accepting such appointment hereunder, and thereupon such new trustee or trustees shall become vested with all the property, rights, duties and trusts of a trustee hereunder with like effect as if named as trustee herein, and the trustee or trustees removed or resigning shall, on the written request of the new trustee or trustees who may be appointed, immediately execute an instrument of transfer to vest in such new trustee or trustees upon the trusts herein expressed all the property, privileges and right- hereunder of the trustee or trustees so resigning or removed, and shall duly assign, transfer and deliver to such new trustee or trustees any moneys held hereunder for the further security of the bondholders.

It is understood and agreed that the word "trustee" or "trustees" as used in this instrument shall be held and construed to mean the parties of the second and third parts or their successor or successors, for the time being, in the trust hereby created, and the words "railroad company" shall be held and construed as including the lawful successors and assigns of the said company.

Meetings of holders of the bonds secured by this instrument for the determination of or action upon any of the provisions of this indenture which the majority in interest of the bondholders may have the right to decide, may be called by the trustees, and the bondholders may vote thereat *by* person or by proxy; or such other regulations or by-laws in respect to such meetings may be from time to time established, altered or repealed by the bondholders acting by a majority in interest as to them shall seem expedient, and any bondholder attending any such meeting shall have the right to require that any act or resolution of the bondholders affecting the rights or remedies of or for the benefit of the bondholders or the duties of the trustees or the interest of the trust thereby created shall be authenticated by the signatures of all the persons assenting thereto, as well as by a minute of the proceedings at such meeting.

129 Lastly. The parties of the second and third parts have become parties hereto in order to signify their acceptance of the trusts hereby created.

In witness whereof, the said party of the first part has caused its corporate seal to be hereto affixed and attested by its secretary and this instrument to be signed in its corporate name by its president, and the parties of the second and third parts have each caused its corporate seal to be hereto affixed and attested by their respective

secretaries, and this instrument to be signed in their respective corporate names by their respective presidents.

[Seal of the Lake Street Elevated Railroad Company.]

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By JOHN A. ROCHE, *President.*

Attest: O. W. BRUNER, *Secretary.*

[Seal of the American Trust and Savings Bank.]

THE AMERICAN TRUST AND SAVINGS BANK,
By G. B. SHAW, *President.*

Attest: J. R. CHAPMAN, *Secretary.*

[Seal of the Farmers' Loan and Trust Company.]

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest: E. S. MARSTON, *Secretary.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Alice G. Nelson, a notary public in and for said county, in the State aforesaid, do hereby certify that John A. Roche, personally known to me to be the same person whose name is subscribed to the foregoing instrument as president of the Lake Street Elevated Railroad Company, and personally known to me to be the president of said The Lake Street Elevated Railroad Company, appeared
130 before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such president, and as the free and voluntary act of said The Lake Street Elevated Railroad Company, for the uses and purposes therein set forth.

And I do hereby also certify that O. W. Bruner, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as secretary of the said The Lake Street Elevated Railroad Company, personally known to me to be the secretary of said The Lake Street Elevated Railroad Company, appeared before me this day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate seal of said The Lake Street Elevated Railroad Company, as his free and voluntary act as such secretary, and as the free and voluntary act of said The Lake Street Elevated Railroad Company, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 3d day of May, A. D. 1893.

ALICE G. NELSON,
Notary Public.

[NOTARIAL SEAL.]

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Alice G. Nelson, a notary public in and for said county, in the State aforesaid, do hereby certify that Gilbert B. Shaw, personally known to me to be the same person whose name is subscribed to the foregoing instrument as president of the American Trust & Savings bank, and personally known to me to be the president of said The American Trust & Savings bank, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such president and as the free and voluntary act of said The American Trust & Savings bank for the uses and purposes therein set forth.

And I do hereby also certify that Jas. R. Chapman, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as secretary of the said The American Trust & Savings bank, personally known to me to be secretary of said The American Trust & Savings bank, appeared before me this
131 day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate seal of said The American Trust & Savings bank as his free and voluntary act as such secretary, and as the free and voluntary act of said The American Trust & Savings bank, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 3d day of May, A. D. 1893.

ALICE G. NELSON,
Notary Public.

[NOTARIAL SEAL.]

STATE OF NEW YORK, }
County of New York, } ss:

I, George H. Corey, a commissioner for the State of Illinois, duly commissioned and qualified, in and for said county, in the State aforesaid, do hereby certify that Roswell G. Rolston, personally known to me to be the same person whose name is subscribed to the foregoing instrument as president of the Farmers' Loan and Trust Company, and personally known to me to be the president of said The Farmers' Loan and Trust Company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such president, and as the free and voluntary act of said The Farmers' Loan and Trust Company, for the uses and purposes therein set forth.

And I do hereby also certify that Edwin S. Marston, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as secretary of the said The Farmers' Loan and Trust Company, personally known to me to be the secretary of said The Farmers' Loan and Trust Company, appeared before me this day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate seal of said The Farmers' Loan and Trust Company, as his free and voluntary act as such secretary, and as the free and voluntary act

of said The Farmers' Loan and Trust Company, for the uses and purposes therein set forth.

Witness my hand and official seal, this 5th day of May, A. D. 1893.

[COMMISSIONER'S SEAL.] GEORGE H. COREY,
Commissioner for the State of Illinois,
Office, 66 Wall Street, N. Y.

132 UNITED STATES OF AMERICA, *State of Illinois,* } 88 :

OFFICE OF SECRETARY.

I, William H. Hinrichsen, secretary of state of the State of *the State of* Illinois, do hereby certify that the foregoing mortgage of the Lake Street Elevated Railroad Company *were* filed for record in the office of the secretary of state of the State of Illinois, on the 11th day of May, A. D. 1893, at 8 o'clock a. m., and duly recorded in Book No. 12 of Railroad Records at page 266.

In witness whereof, I hereto set my hand and affix the great seal of State at the city of Springfield, this 23rd day of May, A. D. 1893.

[Seal of the State of Illinois.]

W. H. HINRICHSEN,
Secretary of State.

STATE OF ILLINOIS, *Cook County,* } 88 :

Filed for record May 6, 1893, at 5.30 o'clock p. m., and recorded in Book 4256 of Records, page 230.

SAMUEL B. CHASE, *Recorder.*

Filed for record in the office of the secretary of state of Illinois, May 11, 1893, at 8 o'clock a. m., and recorded in Book 12, page 266.

W. H. HINRICHSEN,
Secretary of State.

Fees, $18.00. Paid.

And the court doth further find that at the time the said mortgage or trust deed, executed and delivered as aforesaid, was so made, executed and delivered and recorded, the said defendant, The Farmers' Loan and Trust Company, being such corporation as aforesaid, under the laws of the State of New York, had not then nor at any time prior thereto, nor has said defendant, The Farmers' Loan and Trust Company, since said time complied with the laws
133 of the State of Illinois requiring the deposit with the auditor of public accounts of the State of Illinois of the sum of two hundred thousand dollars ($200,000) in stocks of the United States or municipal bonds of the State of Illinois, or in mortgages or improved or productive real estate in the State of Illinois, being first liens thereon, said real estate being worth at least twice the amount loaned thereon.

And the court does further find that said defendant, The Farm-

ers' Loan and Trust Company, has not deposited with the auditor of public accounts for the benefit of the creditors of the said The Farmers' Loan and Trust Company, or for any other purpose, any sum of money whatsoever, either in money, stocks, bonds, mortgages or otherwise, but that the said defendant, The Farmers' Loan and Trust Company, has wholly failed and neglected to deposit with the said auditor of public accounts any money or property whatsoever, and has wholly failed and neglected to comply with the said laws of the State of Illinois requiring a deposit to be made with the auditor of public accounts, as aforesaid.

And the court doth further find that at the time of and since the acceptance of the trust created in and by the said mortgage and trust deed so made by said complainant, The Lake Street Elevated Railroad Company, as aforesaid, by the defendant, The Farmers' Loan and Trust Company, the said defendant, The Farmers' Loan and Trust Company, was and continuously has been and is now doing and carrying on business in the State of Illinois, in the acceptance and performance of the trusts under the above-recited trust deed, and by the acceptance of similar trusts, except such other trusts do not provide for the appointment of an agent, and was and continuously has been doing and carrying on business in the State of Illinois, without having made the said deposit as required by the said laws of the State of Illinois, and without having made
134 or attempted to make any deposit whatsoever as required by the said laws of the State of Illinois.

And the court doth further find that under and by virtue of the mortgage or deed of trust so made, executed and delivered by said complainant, The Lake Street Elevated Railroad Company, as aforesaid, the said defendants, The Farmers' Loan and Trust Company, and The American Trust and Savings Bank, did, in August, 1894, appoint one William Burry, of the city of Chicago, in the State of Illinois, as their agent to represent them under the terms, provisions and conditions of the said mortgage or deed of trust, and that said Burry has, during all of said time, acted under said appointment in Illinois.

And the court doth further find that under and by virtue of said mortgage or deed of trust there was certified and delivered by said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, sixty-five hundred (6,500) bonds of one thousand dollars ($1,000) each, as provided to be issued by said mortgage or deed of trust.

And the court doth further find that after the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, cotrustee, had certified and delivered said sixty-five hundred (6,500) bonds under said mortgage or deed of trust, as aforesaid, other and additional bonds were issued under said mortgage or deed of trust, under and by virtue of the provisions in said mortgage or deed of trust contained, providing for the issuing of bonds in addition to said 6,500 bonds as aforesaid; and the court doth further find that said additional

issue of bonds over and above and in addition to said 6,500 bonds, as aforesaid, were duly certified to by the said defendant, The American Trust and Savings Bank, as trustee, and the said
135 defendant, The Farmers' Loan and Trust Company, as co-trustee, and were delivered by said defendants to said complainant, The Lake Street Elevated Railroad Company.

And the court doth further find that since the acceptance as aforesaid, of the trust created in and by the said mortgage or deed of trust, by the said defendant, The Farmers' Loan and Trust Company, as aforesaid, the said defendant, The Farmers' Loan and Trust Company, has continuously transacted and carried on business in the city of Chicago, in the county of Cook and State of Illinois, in connection with the trusts in said mortgage or deed of trust created, and that the said defendant, The Farmers' Loan and Trust Company, during all that time claimed, and is now claiming, the right and authority — do business and to carry out and execute the trust assumed by it, the said The Farmers' Loan and Trust Company, under the terms, provisions and conditions of said mortgage or deed of trust.

And the court doth further find that since the said mortgage or deed of trust, aforesaid, was made, executed and delivered by said complainant, The Lake Street Elevated Railroad Company, the said complainant has built and is now operating a railroad in the city of Chicago, in the county of Cook and State of Illinois; the said railroad beginning at Market and Madison streets, in the South division of the city of Chicago and running thence north along and upon Market street to Lake street, and thence west along and upon said Lake street to West 52d street, and also from Market street eastwardly along and upon East Lake street or Lake street to Wabash avenue, and that said railroad so operated by said complainant as aforesaid is operated exclusively for the transportation of passengers within the city of Chicago, over the route aforesaid, and that said railroad so operated, as aforesaid, is what is commonly known and designated as an elevated railroad; the said
136 elevated railroad consisting of two upright rows of iron posts or columns, about fourteen feet high, resting upon foundations and connected at their upper extremities by longitudinal and cross girders, and railroad ties resting upon said longitudinal and cross girders, and railroad tracks laid upon said ties, and over which said tracks the trains are operated.

And the court doth further find that one William Ziegler, a citizen of the State of New York, and certain other persons, holding and controlling six hundred and ten (610) of the bonds so issued under and by virtue of and secured by the said mortgage or deed of trust, as aforesaid, did, on or about, to wit, the 24th day of December, A. D. 1895, make a demand upon the said trustee, the American Trust and Savings bank, and said cotrustee, the Farmers' Loan and Trust Company, that they, the said trustee and cotrustee, proceed and foreclose the said mortgage or deed of trust, and apply for a receiver for said railroad company, and under the terms and pro-

visions of said mortgage or deed of trust, take possession of said railroad of said railroad company.

And the court doth further find that afterwards and on, to *to* wit, the 31st day of December, 1895, the said complainant, The Lake Street Elevated Railroad Company, filed *in* its certain bill in chancery in the circuit court of said Cook county, in the State of Illinois, which said suit or bill so commenced or filed, as aforesaid, was and is general number 151,543, in said circuit court, against the said William Ziegler and others, and which said bill set forth and stated, among other things, that 605 of the said 610 bonds so held by the said William Ziegler and others, defendants to the said bill of complaint, so filed, as aforesaid, were all obtained by the said Ziegler from the Lake Street Elevated Railroad Company unlawfully, and that the said William Ziegler
137 and such other defendants, so holding said 605 bonds had no legal or lawful right, title or interest in and to said bonds, and that the said bonds in equity should be surrendered up by the said Ziegler and others to the said The Lake Street Elevated Railroad Company, and which said bill prayed, among other things, that said William Ziegler and others, defendants thereto, and each of them, and the said The Farmers' Loan and Trust Company and said The American Trust and Savings bank be enjoined and restrained from taking any action or proceedings to foreclose said mortgage or trust deed under or by virtue of the request or demand so made by said William Ziegler and others, as representing about 605 of the bonds executed, certified and delivered by the said The American Trust and Savings bank, as trustee, and the said The Farmers' Loan and Trust Company, as cotrustee, as aforesaid; and that answers to said bill were filed by all the defendants thereto, denying the allegations of said bill; that an injunction was granted in the said circuit court, enjoining the defendants to said bill as therein prayed, and that said injunction is still in full force and operation and said bill is still pending and undetermined.

And the court doth further find that no other demand or request by or on behalf of any other person or persons, firm or corporation owning or controlling or representing any of said bonds issued under and by virtue of and secured by said mortgage or deed of trust, as aforesaid, have been made upon said defendants, The American Trust and Savings Bank, trustee, and The Farmers' Loan and Trust Company, cotrustee, or either of them, to take any action whatever under and by virtue of said mortgage or trust deed, or to foreclose the said mortgage or trust deed, or to take possession of the said railroad of the said complainant, The Lake Street Elevated Railroad Company, other than the said demand aforesaid so
138 made by the said William Ziegler and others, representing about 610 of the bonds issued, under and by virtue of and secured by the said mortgage or deed of trust, as aforesaid.

And the court doth further find that notwithstanding that no other person or persons, firm or corporation other than the said William Ziegler and others, representing about 610 of said bonds as aforesaid, has or had asked or demanded or made any request of

said defendants, The American Trust and Savings Bank, trustee, and The Farmers' Loan and Trust Company, cotrustee, to take any action or proceeding under or by virtue of said mortgage or deed of trust, or to foreclose the said mortgage or deed of trust, or to take possession of said railroad of said complainant under or by virtue of said mortgage or deed of trust; nevertheless, the said defendant, The Farmers' Loan and Trust Company did improperly, under and by virtue of said mortgage or deed of trust, as aforesaid, file a bill in chancery, to foreclose the said mortgage or deed of trust so made, executed and delivered by the said complainant, as aforesaid, for and on the ground of the alleged failure of the said complainant to pay the interest upon the bonds secured by said mortgage or deed of trust aforesaid.

And the court doth further find that the said defendant, The Farmers' Loan and Trust Company did, *and* on the 30th day of January, 1896, at thirty-five minutes past 10 o'clock in the forenoon, being the same day on which the bill in this cause was filed by the said complainant, The Lake Street Elevated Railroad Company, file a bill in chancery in the circuit court of the United States for the northern district of Illinois, northern division, to foreclose the said mortgage or deed of trust so made, executed and delivered by the said complainant, The Lake Street Elevated Railroad Company, as aforesaid, and that subpœna was duly issued upon the filing of said bill of complaint by the said The Farmers' Loan and Trust Company, as aforesaid, by the clerk of the circuit court of the
139 United States for the northern district of Illinois, northern division, within ten minutes after the filing of the bill, and delivered to the solicitor of said The Farmers' Loan and Trust Company, and that such subpœna was delivered by the direction of the said Burry acting for and as the solicitor for the said defendants herein, The Farmers' Loan and Trust Company to the United States marshal for the northern district of Illinois, northern division, on the 18th day of February, A. D. 1896, and was by the said marshal by the order and direction of the said Burry served upon the complainant in this bill of complaint, The Lake Street Elevated Railroad Company on, to wit: the 18th day of February, A. D. 1896; and the court doth further find that the bill of complaint in this cause was filed at 11 o'clock in the forenoon of said January 30, 1896, in the office of the clerk of this court and immediately there issued out of said clerk's office the writ of injunction as hereinbefore in this decree set forth, and that said writ of injunction was duly served upon said William Burry, agent as aforesaid, for the said defendant, The Farmers' Loan and Trust Company, on the said 30th day of January, 1896, at the hour of ten minutes after 11 o'clock in the forenoon of said day.

And the court doth further find that upon the filing of the bill of complaint in this cause, there was issued out of the clerk's office of this court under the seal of this court, in due form of law, a summons in chancery, and that said summons in chancery was duly delivered to the sheriff of Cook county, in the State of Illinois, and was by said sheriff daly served upon the said defendant, The

Farmers' Loan and Trust Company, on the 6th day of February, A. D. 1896.

And the court doth further find that said bill so filed by the Farmers' Loan and Trust Company in the circuit court of the
140 United States for the northern district of Illinois, northern division, as aforesaid, was so filed by the said defendant, The Farmers' Loan and Trust Company solely and alone, and that the defendant herein, The American Trust and Savings Bank, declined and refused to join the said defendant, The Farmers' Loan and Trust Company, in the filing of the said bill of complaint as aforesaid.

And the court further finds that afterwards, and on —, the 16th day of March, 1896, the said William Burry, acting as one of the solicitors of record for the said The Farmers' Loan and Trust Company, applied to the circuit court of the United States for the northern district of Illinois, northern division, for leave to file an amended bill of complaint in the said cause so commenced by the said The Farmers' Loan and Trust Company, on the 30th day of January, 1896, as aforesaid, and that upon such application being made by the said William Burry, as aforesaid, for leave to file such amended bill, the said court to which such application was so made, as aforesaid, did grant leave to the said The Farmers' Loan and Trust Company to file such amended bill, and that thereupon and on, to wit, the 16th day of March, 1896, the said William Burry, acting as such solicitor of record, as aforesaid, for the said defendant herein, The Farmers' Loan and Trust Company, did file in said circuit court of the United States for the northern district of Illinois, northern division, an amended bill in said cause.

And the court doth further find that the defendant herein, The American Trust and Savings Bank, did decline and refuse to join the said defendant herein, The Farmers' Loan and Trust Company, in the filing of said amended bill of complaint as aforesaid, and that the said American Trust and Savings bank has, ever since the filing of said original bill of complaint by the said defendant, The Farmers' Loan and Trust Company as aforesaid, and still does
141 refuse and decline to join the Farmers' Loan and Trust Company in the filing of any bill of complaint to foreclose the said mortgage or deed of *of* trust so made by the said complainant, The Lake Street Elevated Railroad Company as aforesaid.

And the court doth further find that the said complainant did duly pay the interest upon all of the bonded indebtedness secured by said mortgage or deed of trust as aforesaid, maturing up to the 1st day of January, 1895, and that said complainant did provide for the interest upon said bonded indebtedness, as aforesaid, falling due on the 1st day of January, 1895, and that interest falling due since said last-mentioned date has not been paid.

And the court doth further find that there has been now issued under the said mortgage or deed of trust so made, executed and delivered by the said complainant, The Lake Street Elevated Railroad Company as aforesaid, 7,574 of said bonds, and that The Northern Trust Company, defendant, as holder, under the instrument of

trust offered in evidence, of more than sixty-five hundred and seventy-four (6,574) of said bonds, have especially requested the said defendant, The American Trust and Savings Bank, trustee as aforesaid, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, to take no action whatsoever under the terms, provisions and conditions of said mortgage or deed of trust.

And the court doth further find that in accordance with such request the said defendant, The American Trust and Savings Bank, as trustee, under said mortgage or deed of trust, did make a full and careful examination of the affairs of the said complainant, The Lake Street Elevated Railroad Company, and did, as such trustee, as the result of such investigation, on the 28th day of January, 1896, properly decline and refuse to join with the said defendant, The Farmers' Loan and Trust Company, as cotrustee, in any pro-
142 ceeding whatever to enforce the terms, provisions or conditions of said mortgage or deed of trust, because said The American Trust and Savings bank, in the proper exercise of its discretion, was of the opinion that no such proceeding should be had or instituted.

And it further appearing to the court that after the announcement in open court on Thursday, May 28, 1896, and Friday, May 29, 1896, as to the findings of the court upon the issues involved, the said defendant, The Farmers' Loan and Trust Company, asked through its solicitor in open court an opportunity to decide whether it would make the deposit as aforesaid with the auditor of the State of Illinois; and thereupon the court gave said Farmers' Loan and Trust Company until the 3rd day of June, 1896, at 10 o'clock a. m., to determine such matter, and the said Farmers' Loan and Trust Company now in open court, through its solicitor, states that it declines and refuses to make such deposit as required by the laws of the State of Illinois.

It is therefore ordered, adjudged and decreed by the court that the said defendant, The Farmers' Loan and Trust Company, be and it is hereby removed as trustee or cotrustee, under the said mortgage or deed of trust made, executed and delivered by said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, which said mortgage or deed of trust is dated the 7th day of April, 1893, and was duly filed for record in the office of the recorder of deeds of the county of Cook, in the State of Illinois, on the 6th day of May, 1893, and there recorded in Book 4256 of Records at page 230, and which was afterwards and on the 11th day of May, 1893, duly filed in the office of the secretary of state of the State of Illinois, and there recorded in Book 12, at page 266.

And it is further ordered, adjudged and decreed by the
143 court that the said defendant, The Farmers' Loan and Trust Company, and its attorneys, solicitors, officers, agents and servants, and each and every of them be and they are hereby perpetually enjoined and restrained from taking any proceedings or bringing or prosecuting any suit or suits to foreclose said mortgage

or trust deed from said complainant to said American Trust and Savings bank and said Farmers' Loan and Trust Company, or acting in any manner whatsoever under and by virtue of the terms, provisions and conditions of said mortgage or deed of trust so made, executed and delivered by the said complainant, The Lake Street Elevated Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee.

And it is further ordered, adjudged and decreed that the said defendant, The American Trust and Savings Bank, as trustee, under the said mortgage or deed of trust so made, executed and delivered by the said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, do, and it is hereby ordered and directed to appoint, by an instrument in writing, within thirty days from the date of the entry hereof, a cotrustee, under the said mortgage or deed of trust so made, executed and delivered by the said complainant, as aforesaid, in place of the said defendant, The Farmers' Loan and Trust Company, and that upon such successor being so appointed by the said defendant, The American Trust and Savings Bank, as aforesaid, such successor shall, upon accepting said appointment as aforesaid, under said mortgage or deed of trust, be and become vested with all the property, rights, duties and trusts of a trustee under said trust deed, with the like effect as if named
144 as trustee therein, and shall likewise be vested with all right, title and interest of said Farmers' Loan and Trust Company under said trust deed, and that the said The Farmers' Loan and Trust Company, on the written request of said new trustee so appointed, shall immediately execute an instrument of transfer to vest in such new trustee upon the trusts in said trust deed expressed, all the property, privileges and rights thereunder of the said The Farmers' Loan and Trust Company, and that said The Farmers' Loan and Trust Company shall duly assign, transfer and deliver to such new trustee so appointed, any moneys held under and by virtue of such trust deed, for the further security of the bondholders, and that in case of the failure upon the part of said The Farmers' Loan and Trust Company, to make, execute and deliver the instrument as aforesaid; that A. F. Stevenson, master in chancery of this court is authorized and directed to make, execute and deliver on behalf of said The Farmers' Loan and Trust Company the instrument required by it to be made and delivered as aforesaid, and that such instrument or instruments when so made, executed and delivered by such master in chancery as aforesaid, shall have the same force and effect as though made, executed and delivered by the said defendant, The Farmers' Loan and Trust Company.

It is further ordered, adjudged and decreed that upon the failure of the said The American Trust and Savings bank to make the appointment as aforesaid, within thirty days, that the court hereby reserves the power, right and authority to appoint a cotrustee as successor to said The Farmers' Loan and Trust Company under

said trust deed, and for the purposes aforesaid and for all other purposes, deemed by this court necessary and proper to enforce this decree and all the provisions thereof, this court expressly reserves unto itself jurisdiction of the cause, and jurisdiction of all parties thereto and hereto.

145 And thereupon the said defendant, The Farmers' Loan and Trust Company, prayed an appeal from this decree to the appellate court for the first district of Illinois, which was allowed upon its filing an appeal bond conditioned according to law, in the penal sum of twenty-five hundred dollars ($2,500), with security to be approved by the court, within twenty days from this date. And thirty days from this date were allowed said defendant in which to present a certificate of evidence in this cause.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Stephen D. Griffin, clerk of the superior court of Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain decree made and entered of record in said court in a certain cause lately pending in said court on the chancery side thereof, wherein the Lake Street Elevated R. R. Co. was complainant and the Farmers' Loan and Trust Co. *et al.*, defendants.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, this 5th day of June, A. D. 1896.

[SEAL.] STEPHEN D. GRIFFIN, *Clerk.*

146 And afterwards, to wit, on the 3rd day of July, A. D. 1896, the same being one of the days of the June term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE LAKE STREET ELEVATED RAILROAD COMPANY *vs.* THE FARMERS' LOAN AND TRUST COMPANY ET AL. } 172,156. Bill.

Upon the stipulation of the parties hereto, it is ordered that the time for the defendant The Farmers' Loan and Trust Company to file the certificate of evidence herein be, and the same is hereby, extended to July 17th, 1896.

147 And afterwards, to wit, on the 16th day of July, A. D. 1896, there were filed in the office of the clerk of said court certain stipulation and certificate of evidence, which are in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
THE FARMERS' LOAN & TRUST COMPANY ET AL., Defendants.
} In Chancery. Gen. No.,—.

It is hereby stipulated and agreed by and between the parties hereto that the original certificate of evidence filed herein may be incorporated in the transcript of the record instead of a copy thereof, on the appeal heretofore taken herein by the defendant The Farmers' Loan & Trust Company to the appellate court in and for the first district of Illinois.

KNIGHT & BROWN,
Solicitors for the Complainant, The Lake Street Elevated Railroad Company.
MORAN, KRAUS & MAYER,
Solicitors for the Defendant The American Trust & Savings Bank.
DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for the Defendant The Northern Trust Company.
RUNNELLS & BURRY & HERRICK,
ALLEN, BOYESEN & MARTIN,
Solicitors for the Defendant The Farmers' Loan & Trust Company.

Dated July 16, 1896.

148 (Endorsed:) Gen. No., 172,156; term No., 3224. Superior court of Cook county. The Lake Street Elevated R. R. Co. *vs.* The Farmers' Loan and Trust Co. *et al.* Stipulation that original certificate of evidence be incorporated in record instead of copy. Filed Jul- 16, 1896. S. D. Griffin, clerk.

149 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County, May Term, A. D. 1896.

THE LAKE STREET ELEVATED RAILROAD COMPANY
vs.
THE FARMERS' LOAN & TRUST COMPANY ET AL.

Certificate of Evidence.

I, John Barton Payne, one of the judges of said court in chancery sitting, do hereby certify that heretofore, to wit, on the 5th day of May, A. D. 1896, being one of the days of said term of said court, said cause came on for hearing before me upon the pleadings heretofore filed herein, Clarence A. Knight, Esq., appearing for the complainant, The Lake Street Elevated Railroad Company, and

Levi Mayer, Esq., appearing for the defendant The American Trust & Savings Bank, and William Burry, Esq., and John J. Herrick, Esq., appearing for the defendant The Farmers' Loan & Trust Company, and N. B. Judah, Esq., appearing for the defendant The Northern Trust Company.

And thereupon the said complainant, to maintain the issues upon its part, introduced the following evidence, to wit:

150 WILLIAM B. MORRIS, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Knight and testified as follows:

Q. What is your name, please?
A. William B. Morris.
Q. What is your business?
A. I am clerk in the secretary of state's office.
Q. Where?
A. At Springfield, Illinois.
Q. Mr. Morris, have you the records of the office of the secretary of state of Illinois?
A. I have one of them.
Q. What is it?
A. It is one of the record books in which——

Mr. HERRICK: I can't hear you.

A. I have one of the record books of the secretary of state's office. It is one of the books in which railroad mortgages are recorded.
Mr. KNIGHT: What volume is it?
A. Volume 7.
Q. Please turn to page 150 and state to the court what mortgage is there recorded.

The COURT: Let us get at what this is.
Mr. BURRY: We admit the recording of the trust deed.
The COURT: I don't know what it is.

A. Page 150, the St. Louis, Alton & Springfield Railroad Company to the Farmers' Loan & Trust Company of New York, parties of the first and second part respectively.

Mr. KNIGHT: We offer that mortgage in evidence.
151 Objected to by counsel for defendant The Farmers' Loan & Trust Company.

The COURT: For what purpose is it offered?
Mr. KNIGHT: For the purpose of showing that this company has accepted trusts and is doing business in the State of Illinois.
The COURT: Received subject to objection. Go on.

Mr. KNIGHT: What was the date of that, Mr. Morris?
Mr. BURRY: What is the name?
The COURT: Repeat that name.
A. The St. Louis, Alton & Springfield Railroad Company, party

of the first part, with the Farmers' Loan & Trust Company of New York, trustee, party of the second part.

Mr. HERRICK: What is the date?

A. September 1st, 1887.

Mr. BURRY: Give the book and page again.

A. Book 7, page 150.

Mr. KNIGHT: Turn to page 161, Mr. Morris, same record.

A. Page 161?

Q. Yes. What have you there?

A. The Indianapolis, Decatur & Western Railway Company to the Farmers' Loan & Trust Company of New York.

Q. A little louder.

A. The Indianapolis, Decatur & Western Railway Company to the Farmers' Loan & Trust Company of New York and Noble C. Butler, of Indianapolis, Indiana.

Q. What is the date?

A. The 2nd of January, 1888.

Mr. KNIGHT: We offer that in evidence, if your honor please.

Mr. BURRY: Objected to.

152 The COURT: The same ruling. Let it all be objected to. I assume there are several of them.

Mr. KNIGHT: Yes. Page 180, same volume, 7.

A. Indianapolis, Decatur & Western Railway Company to the Farmers' Loan & Trust Company of New York and Noble C. Butler, of New York and Indianapolis respectively.

Q. What is the date?

A. The 2nd of January, 1888.

Mr. KNIGHT: We offer them in evidence. That is all. I will offer certified copies. The secretary of state didn't have time to make the copies, and I ask leave to introduce certified copies of them hereafter.

Mr. BURRY: We have no objection to the copies as such, but think it is all incompetent.

The COURT: You don't object to the manner, but the competency of the proof?

Mr. BURRY: Yes.

Mr. HERRICK: Are those the dates of the instruments?

A. Yes; those are the dates of the instruments and not the date of recording.

Mr. KNIGHT: What is the date of the recording of these?

A. The first one was filed for record September 16th, 1887, 10.30 a. m.; the second, March 9th, 1888, 5.30 p. m.; the last one, March 9th, 1888, 5.30 p. m.; the two last, the same hour.

Mr. KNIGHT: I simply desire to call the attention of the court to the amount of bonds that these respective mortgages secure.

153 The first one shown on page 150 is to secure 1,200 bonds of $1,000 each, running for thirty years; the second one, on page 161, to secure 1,942 bonds of $1,000 each, expiring 1948; the third one, to secure 1,419 bonds of $1,000 each, due in 1948.

Said three last-mentioned documents, in each of which respectively said Farmers' Loan & Trust Company was grantee, were thereupon read in evidence by counsel for complainant and are respectively as follows, to wit:

154 St. Louis, Alton & S'field R. R'd Co. to Farmers' Loan & Trust Co., trustee. } Deed of trust.

This indenture, made and entered into this first day of September, A. D. one thousand eight hundred and eighty-seven, by and between the St. Louis, Alton & Springfield Railroad Company, a corporation created and existing under the laws of the State of Illinois, of the first part, and the Farmers' Loan and Trust Company of New York, trustee, of the second part.

Witnesseth: That whereas, the said St. Louis, Alton & Springfield Railroad Company is engaged in the construction of a railroad extending from the city of East St. Louis, St. Clair county, to the city of Springfield, Sangamon county, in the State of Illinois; and whereas, for the purpose of raising further means for the construction and equipment of its said railroad and the payment of its debts, said company has resolved to issue its bonds to the amount of one million two hundred thousand ($1,200,000) dollars; said bonds to consist of a series of twelve hundred bonds, to be of one thousand dollars each, and numbered from 1 to twelve hundred inclusive, having thirty years to run from their date with interest at five per cent. per annum. The following is a copy of one of said bonds, that is to say:

155 No. —. $1,000.

UNITED STATES OF AMERICA, *State of Illinois.*

The St. Louis, Alton & Springfield Railroad Company First-mortgage Bond.

Know all men by these presents: That the St. Louis, Alton & Springfield Railroad Company, a corporation organized and existing under the laws of the State of Illinois, for value received, hereby promises to pay to the Farmers' Loan and Trust Company of New York, trustee, or bearer, at its office or agency in the city of New York on the first day of September, A. D. nineteen hundred and seventeen, one thousand dollars in the United States gold coin of the present standard of value, with interest thereon at the rate of five per cent. per annum, payable semi-annually, on the first days of September and March in each year, on presentation and surrender of the annexed coupons as they severally become due, free of all taxes except such taxes as may be imposed by the laws of the State wherein the holder hereof may have his domicile. The within bond is one of a series of twelve hundred bonds of one thousand dollars, each of like tenor and date, numbered from one to twelve hundred, the payment of the principal and interest of which is secured by the indenture of a mortgage or deed of trust conveying

to said trustee in trust the entire railroad equipment, franchises, leaseholds, property and income of said company now held or which may hereafter be acquired, subject only to such specific liens on future acquisitions as may be assumed as part of the conditions of such acquisitions. If default shall occur upon any of the said
156 bonds and such default shall continue for six months, the whole number of said bonds shall become due in the manner and with the effect provided in said mortgage or deed of trust. Said company hereby waives the benefit of any extension, stay or appraisement laws now existing or that may hereafter exist in the said State of Illinois.

This bond shall not become obligatory upon the company until the certificate endorsed hereon shall have been signed by said trustee.

In witness whereof, the said company has caused its corporate seal to be hereto affixed and the same to be signed by its president and secretary, this first day of September, one thousand eight hundred and eighty seven.

THE ST. LOUIS, ALTON & SPRINGFIELD RAILROAD COMPANY,

By —— ——, *President.*

Attest: —— ——, *Secretary.*

Coupon.

No. —. $25.

The St. Louis, Alton & Springfield Railroad Company, will pay the bearer in the city of New York, twenty-five dollars in U. S. gold coin on the — day of —— being six months' interest then due on its first-mortgage bond.

No. —. —— ——, *Secretary.*

157 *Trustee's Certificate.*

The Farmers' Loan and Trust Company of New York hereby certifies that this bond is one of twelve hundred bonds of $1,000 each, mentioned and set forth in the mortgage within referred to.

THE FARMERS' LOAN AND TRUST COMPANY OF NEW YORK,

By —— ——, *Trustee.*

And whereas, the stockholders of the St. Louis, Alton & Springfield Railroad Company, at a meeting called by the board of directors of said corporation, and held at the office of said company in the city of Alton, county of Madison and State of Illinois, on the (22d) twenty-second day of August, A. D. one thousand eight hundred and eighty-seven, pursuant to a notice stating the time, place and object of said meeting, which notice was served personally upon each of the stockholders of said corporation, and published in some newspaper which is published in each county through and into which said line of said railroad runs, more than sixty days prior to said twenty-second day of August, A. D. one thousand eight hun-

dred and eighty-seven; authorized and sanctioned the issue of said one million two hundred thousand ($1,200,000) dollars first mortgage bonds as aforesaid, and the execution and delivery of a first mortgage or deed of trust upon all the railroad of said company between East St. Louis and Springfield, in the State of Illinois, now being constructed or which may be hereafter *be* acquired in any manner, to secure the payment of said bonds by the concurrence, authority and direction of the holders of more than two-thirds in amount of all the capital stock of said corporation, and
158 whereas at said meeting of the stockholders held on the said twenty-second day of August, A. D. one thousand eight hundred and eighty-seven as aforesaid by the concurrence of the holders of more than two-thirds in amount of the stock of said corporation the following resolutions were adopted:

Resolved, That for the purpose of completing, finishing, improving and operating the line of railroad of this company extending from East St. Louis, St. Clair county, to Springfield, Sangamon county, State of Illinois, it is necessary that this company does borrow one million, two hundred thousand ($1,200,000) dollars, and that the board of directors of the company is hereby authorized to issue and dispose of bonds of this company to the amount of one million, two hundred thousand ($1,200,000) dollars, and to secure the same by a deed of trust or mortgage covering the entire property and franchises of this company as now held or hereafter to be acquired.

Resolved, That said bonds shall be in such denominations as the board of directors shall approve, and shall be payable thirty years after date with interest at the rate of five per cent. per annum, payable semi-annually, which with the principal shall be payable at the office or agency of this company, in the city of New York, in gold coin of the United States of present value, and there shall be written in said mortgage such provisions, by way of remedy for forfeiture, in the event of default, as the board of directors may approve.

The said bonds to be numbered consecutively and to be of the same denomination, form, tenor and effect, and that when and as the said bonds shall be issued, each and all thereof shall have the same rights, liens and privileges of said mortgage, and shall be equally secured thereby, without preference or priority as to
159 liens or otherwise, and with the like effect as though all of said bonds had been made, executed and issued on the day of the date of said mortgage.

Whereas: This indenture with the provisions and trust hereinafter contained has been duly approved by said board of directors, and the said board has issued and is about to dispose of the bonds of this company as above set forth;

Now, therefore, be it known that the St. Louis, Alton & Springfield Railroad Company, party of the first part, in consideration of the premises and in order to the security of the bonds hereinbefore described to the extent of one million two hundred thousand ($1,200,000) dollars and no more has this day granted, bargained,

sold, conveyed and transferred unto the said Farmers' Loan and Trust Company of New York, trustee, and its successors in said trust, all of the right of way and railroad of said first party extending from the city of East St. Louis, St. Clair county, through St. Clair county and the counties of Madison and Jersey in a northerly direction to a point on or near the line of the St. Louis and Central Illinois railroad (formerly the St. Louis, Jerseyville and Springfield railroad) between Elsah or Jersey Landing and Jerseyville in said county of Jersey, thence through said Jersey county in a northerly direction near or on the line of the said St. Louis and Central Illinois railroad into and through the counties of Macoupin, Morgan and Sangamon to Bates in said last-named county, and thence in an easterly direction to the city of Springfield, Sangamon county and State of Illinois, as the same is located, laid out, partly constructed and being operated; together with all the em-
160 bankments, bridges, turnouts, side tracks, buildings and structures, water tanks, depots, turn-tables, engines, cars, machinery, tools, and every other thing appurtenant to said railroad or used in connection therewith belonging to said first party, together with all the rents, issues and profits, credits and choses in action, accruing to said first party from said railroad and appurtenances as owner and holder thereof.

To have and to hold the said property real and personal, including the said railroad, appurtenances, equipments, franchises, rights credits and every interest herein granted, unto the said trustee and its successor; but in trust nevertheless for the uses and purposes herein declared.

If the St. Louis, Alton & Springfield Railroad Company or its successors or assigns shall well and truly pay or cause to be paid the several sums of money specified in the several bonds hereinbefore described, as well the principal as the installments of interest, according to the tenor and effect of said bonds and each of them or if the said bonds and the interest thereon become in anywise paid and satisfied, then and in that case the estate, right, title, interest and demand of said party of the second part or its successor in said trust and assigns shall cease, determine and become void otherwise to be and remain in full force and virtue in law, and for the benefit and security of the holders of said bonds and each of them.

In case default shall be made in the payment of any installment of interest accrued on said bonds or any of them and such default shall continue for the period of six months after the maturity
161 thereof it shall be lawful for said party of the second part or its successor in trust by its agent or attorney to enter upon, take possession of, manage, operate and control the railroad and property hereby conveyed, by superintendents, receivers and managers thereof, making from time to time all needful repairs and such alterations as may seem to be judicious and proper, and to collect and receive all tolls, incomes and profits thereof, and after deducting the expenses of operating said railroad and all costs of improvements and taxes that may have accrued thereon as well as just and reasonable compensation for their own work and labor in

and about the premises to apply the moneys arising therefrom to the payment of interest in the order in which it is due and when said interest so in default and any installment thereof subsequently maturing shall be paid up, then said party of the second part shall restore the possession of the said railroad to the said party of the first part.

If default shall occur in the payment of any installment of interest, and such default continue for the space of six months after maturity and demand therefor, then if a majority in value of the holders of said bonds then outstanding and secured by this mortgage shall determine and notify said trustee that they require that the principal of all of said bonds become at once due and payable, said bonds shall thereby become due and payable, any clause contained therein to the contrary notwithstanding, and if said principal sum shall become due and not paid by said first party according to the tenor of said bonds, and upon written notice by the holders of a majority of the bonds issued and outstanding under the authority hereinbefore mentioned, the said trustee shall have the power to enter
162 upon and take possession of said railroad with the appurtenances and all and singular the property and franchises hereby mortgaged, and the agents of said railway company are hereby authorized and required to deliver up the same. Then it shall be the duty of the said trustee to proceed in any proper tribunal to foreclose said mortgage according to the usual and established principles of law and equity, but it is expressly understood and agreed between the parties that in no case whatever shall the party of the first part claim any right or advantage by reason of any valuation, appraisement, stay or extension laws that now exist or may hereafter be enacted in the State in which said property exists, and said first-named party hereby releases to the second parties all and every such right, claim and demand and hereby further agrees that it will neither apply for an injunction or any stay of proceedings to arrest or prevent such sale from being made or possession being taken as hereinbefore provided.

It is expressly declared that this instrument is made and the trust herein declared upon condition that if any sale shall be made under and by virtue of this mortgage, the holders of a majority of the said bonds then outstanding shall have the right to have the said premises, and all the property therein embraced purchased for the use and benefit of all the holders of said then outstanding bonds.

In case such sale shall be made by any person or officer other than the trustee herein named or its successor, then the holders of the majority of the said bonds outstanding shall have the right by notice in writing, to require the said trustee or its successor to make such purchase on such terms as they in said notice prescribed,
163 and in case said sale shall be made by said trustee, then the holders of a majority of said outstanding bonds shall have the right to appoint any other person whom they may choose to make such purchase on such terms as they may prescribe. If any person other than such trustee shall be appointed, such appoint-

ment and the terms of purchase shall be in writing, a copy of which writing shall be delivered to said trustee or its successor before such sale. And if the holders of a majority of said outstanding bonds shall elect to have said purchase made as aforesaid and shall prescribe the terms on which they desire to make the same, then it shall be the duty of said trustee or its successor, or such other person as may be appointed as aforesaid to make such purchase if the same can be made on the terms so prescribed and having so purchased said premises and property the right and title thereto shall vest in the said trustee or person so purchasing, for the use aforesaid, and no bondholder shall have any claim to the said property or the proceeds thereof except his *pro rata* share therein, as represented by a new company or corporation, to be formed for the use and benefit of the holders of all said bonds then outstanding; and said trustee or person making said purchase shall take such lawful measures as may be deemed for the interest of all said bondholders to organize a new company or corporation; said company or corporation to be so organized upon such terms, conditions or limitations and in such manner as the holders of a majority of said outstanding bonds shall in writing request or direct. And thereupon the said trustee or other persons making said purchase shall convey said premises and property to the new company or corporation.

164 And it is hereby declared that all persons who shall claim any interest, benefit or advantage by virtue of this instrument, or the trust hereby created, shall take the same, subject to all the terms, herein contained and subject to all the rights and powers conferred by this instrument on the holders of a majority of the bonds hereby secured.

In case of the resignation or incapacity of the trustee herein named to act as trustee, or in case of the death, resignation or incapacity to act of any successor to said trustee, it shall be the duty of the board of directors of said railroad company, immediately thereafter to make application to some proper court of record at the county where the general office of said railroad company is located, for the appointment of some suitable person, persons or corporation to become the successor of said trustee, and thereupon the person, persons or corporation so appointed shall be and hereby are vested with all the estate rights and privileges and liable to all the duties by this instrument conferred upon or to the party of the second part to the same extent as if each person, persons or corporation were herein named.

It is hereby agreed and understood that for the better assurance to the party of the second part and to the holders of the bonds secured by this instrument, the party of the first part agrees that it will, on demand at any and all times hereafter, make, execute and deliver all such other and further conveyances and assurances for the better assuring unto said trustee and its successor in the trust hereby created, the said railroad with appurtenances, equipment and property hereinbefore described or intended so to be and all other property belonging to said party of the first part,

now owned or hereafter to be acquired as above provided and set forth, or any and all franchises now held or hereafter to be acq-ired by the party of the first part as said trustee or its successor by their counsel shall reasonably advise, devise or require. It is understood and agreed between the parties hereto that the right of entry above set forth is in addition to the ordinary common-law right to foreclose this mortgage by bill in equity and that such common-law right shall and does exist on the part of the trustee, anything herein contained to the contrary notwithstanding. Should any suit or other proceeding be brought against the trustee by reason of any matter or thing connected with the trust hereby created or by reason of its being such trustee, it shall be under no obligation to enter any appearance by counsel or in any way to appear in and defend the said suit or other proceeding, until indemnified to its satisfaction for so doing, but it may nevertheless appear and defend the same without indemnity, if it shall elect so to do, and in such case it shall be compensated therefor from the trust fund.

In case at any time it shall be necessary and proper for the trustee to make any investigation respecting any facts preparatory to taking or not taking any action or doing or not doing anything as such trustee, the certificate or the party of the first part under its corporate seal, attested by the signature of its president and the affidavit of one or more directors shall be sufficient evidence of such fact to protect the trustee in any action that it may take by reason of the supposed existence of such fact. It shall be no part of the duty of the party of the second part to see to the recording of this indenture as a mortgage or conveyance of real estate
166 or to the filing thereof as a chattel mortgage or renewing such mortgage, or to do any other act which may be suitable and proper to be done for the continuing of the lien of this indenture, or for giving notice of the existence of such lien, nor shall it be any part of its duty to affect insurance against fire or other damage on any portion of the mortgaged property or to renew any policies of insurance.

The trustee shall only be responsible for reasonable diligence in the performance of the trust, and shall not be answerable in any case for the act or default of agent, attorney or employé selected with reasonable discretion.

The trustee shall be entitled to be reimbursed all proper outlays of every sort or nature by it incurred in the discharge of its trust and to receive a reasonable and proper compensation for any duties that it may at any time perform in the discharge of the same; and all such fees, commissions, compensation and disbursements shall constitute a lien on the mortgaged property and premises.

In witness whereof, the said party of the first part, that is to say, the St. Louis, Alton & Springfield Railroad Company, has caused these presents to be signed in its corporate name by its president, and attested by its secretary, with the corporate seal of said company

hereto, as authorized and directed by its board of directors, the day and year above written.

THE ST. LOUIS, ALTON AND SPRINGFIELD RAILROAD COMPANY, [SEAL.]
By DELOS R. HAYNES, *President.* [SEAL.]

Attest: L. C. HAYNES, *Secretary.*

167 STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this first day of September, A. D. 1887, before me, the undersigned, clerk of the circuit court, city of St. Louis, in and for the city and State aforesaid, personally came Delos R. Haynes, who, being by me duly sworn, did depose and say that he is the president of the St. Louis, Alton & Springfield Railroad Company, grantor in the foregoing instrument; that the name of said company is signed to said instrument by him and by virtue of the order of the board of directors of said company as president thereof; that the seal of the company attached thereto is the proper and genuine seal of said company, and is affixed thereto by order of said board of directors; that the said Delos R. Haynes, president, acknowledged the foregoing instrument to be the act and deed of the St. Louis, Alton & Springfield Railroad Company for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my seal of office this first day of September, A. D. 1887.

PHILIP H. ZEPP,
[SEAL.] *Clerk Circuit Court, City of St. Louis.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this first day of September, A. D. 1887, before the undersigned, clerk of the circuit court, city of St. Louis, in and for the city and State aforesaid, personally came Louis
168 C. Haynes, who, being by me first duly sworn, did depose and say that he is the secretary of the St. Louis, Alton & Springfield Railroad Company, grantor in the foregoing instrument; that he countersigned said instrument and affixed the seal of said company thereto by order of the board of directors thereof.

In witness whereof I have hereunto set my hand and affixed my seal of office this first day of September, A. D. 1887.

PHILIP H. ZEPP,
[SEAL.] *Clerk Circuit Court, City of St. Louis.*

Filed and recorded at 9 o'clock a. m., Sept. 8th, 1887.

E. R. ROBERTS,
Clk & ex Off. Rec. Sang. Co., Ill.

STATE OF ILLINOIS, } ss:
Sangamon County, }

I, Thomas W. Wilson, recorder of deeds in said county, in the

State aforesaid, do hereby certify the foregoing to be a true, perfect, and complete copy of deed of trust from the St. Louis, Alton & Spfld. R. R. Co. to the Farmers' Loan & Trust Co., trustee, as the same appears of record in my office in Book 87 of Mortgages, page 414.

In testimony whereof I have hereunto affixed my name and seal, at my office, in Springfield, this 23d day of May, A. D. 1896.

THOS. W. WILSON, [SEAL.]
Recorder of Deeds.

169 *Mortgage.*

Indianapolis, Decatur and Western R'y Co.
to
Farmers' Loan and Trust Co.

This indenture, made this 2nd day of January, A. D. 188– between the Indianapolis, Decatur and Western Railway Company, a corporation constituted by the consolidation of the Indianapolis and Wabash Railway Company, being a corporation organized under the laws of the State of Indiana and the Indianapolis, Quincy and Missouri River Railway Company, a corporation organized under the laws of the State of Illinois, party of the first part, and the Farmers' Loan and Trust Company of New York, and Noble *B.* Butler of the city of Indianapolis in the State of Indiana, as trustee, parties of the second part.

Whereas, the said party of the first part is the owner of a line of railroad extending from the west line of the State of Indiana to Decatur, in the State of Illinois which was formerly the property of the Indianapolis, Decatur and Springfield Railway Company, together with the lands, tenements and hereditaments acquired for the right of way of said railroad and all the appurtenances thereunto belonging and also the lands in the State of Illinois acquired for depots, superstructures, buildings and erections on the said line of railroad in the said State, and also the bridges, viaducts,
170 culverts, fences, buildings and superstructure- appertaining thereto, and all of the real and personal property of every kind whatsoever in the said State of Illinois, in any manner appertaining to or used upon the said railroad and the franchises, powers and privileges relating to or necessary to the use and enjoyment of said railroad which were formerly vested in the Indianapolis, Decatur and Springfield Railway Company, in the said State, and also of all and singular the line of railroad in the State of Indiana extending from the city of Indianapolis westward to the east line of the State of Illinois and the west line of the State of Indiana, connecting with and being a continuation of the railroad before described; together with the lands, tenements and hereditaments acquired for the right of way of said railroad and all the appurtenances thereunto belonging and also the lands in the State of Indiana acquired for depots, superstructures buildings and erections in the said State, with the tracks, bridges, viaducts, culverts, buildings and superstructures appertaining thereto, and of all the real

and personal property of every kind whatsoever in the said State of Indiana in any manner appertaining to or used upon the said railroad in its management or operation which said real estate railroad and appurtenances constitute a line of railroad extending from the city of Indianapolis in the State of Indiana and to which line of railroad there is appurtenant and now in use upon the same rolling stock, consisting of locomotive cars and other material suitable or necessary for the purposes thereof.

171 And whereas, the said Indianapolis, Decatur and Springfield Railway Company heretofore and on or about the 31st day of December, 1895, made and executed an indenture of mortgage to James Emmott and John J. Crane of the city of New York as trustees to secure the issue of eighteen hundred (1,800) bonds of one thousand dollars ($1,000) each with interest at seven per centum payable semi-annually in gold coin and the principal thereof payable thirty years from the date aforesaid and has sold and negotiated the said eighteen hundred bonds secured by the said mortgage which said mortgage contained among other things a clause providing for the payment and redemption by means of a sinking fund, of a certain number of the said bonds in each and every year.

And whereas, the stockholders of the said Indianapolis, Decatur and Western Railway Company at a meeting duly called and holden at the city of Indianapolis did by a unanimous vote of all the stockholders of said corporation pass and adopt the following resolution "Resolved by all the stockholders of the Indianapolis, Decatur and Western Railway Company that the directors of this company, for the purpose of retiring and paying the mortgage resting on this road of this company, executed December 31st 1875 to Emmott and Crane, trustees, to secure $1,800,000 of seven per cent. bonds and for other corporate uses and purposes, are hereby authorized to execute and negotiate bonds to the amount of $1,942,000 bearing five per cent. interest and secure the same by a mort-

172 gage or trust deed conveying all of the property appurtenances and franchises of this company."

And whereas, at a meeting of the board of directors of the Indianapolis, Decatur and Western Railway Company duly held it was resolved in pursuance of such consent and authority duly given by such stockholders that a mortgage should be made and executed to the said parties of the second part herein to be dated January 2nd, 1888, upon all the railroad, real and personal estate, property and equipment, corporate rights and franchises of the said company which at the date of said mortgage should be owned and possessed by the said company to secure nineteen hundred and forty-two (1,942) bonds of one thousand dollars ($1,000) each with interest payable semi annually at the rate of five per centum per annum on the first days of April and October in each year in gold coin of the United States and the principal thereof payable sixty years from the date of said bonds also in like gold coin of which bonds eighteen hundred (1,800) should be exclusively for the purpose of redeeming and cancelling, by exchange or payment, all the bonds which have heretofore been issued under the said mortgage

of December 31st, 1875, including any of said bonds which may heretofore have been designated and redeemed under the sinking-fund clause contained in the said mortgage and may now be in the possession of or owned by the said railway company, and that the president of the said railway company should be authorized to affix the corporate seal of the said railway company to the said mortgage and to each of the said nineteen hundred and
173 forty-two (1,942) bonds and to sign the same as president and that the secretary should be authorized to attest the execution thereof, which bonds with the coupons or interest warrants attached thereto and the certificate of the trustee to be thereupon indorsed are to be of the tenor and effect following:

$1,000. UNITED STATES OF AMERICA. $1,000.

First mortgage Bond Indianapolis, Decatur and Western Railway Company.

STATES OF INDIANA AND ILLINOIS.

The Indianapolis, Decatur and Western Railway Company for value received acknowledges itself indebted unto the bearer in the sum of one thousand dollars, which the said company promises to pay at the city of New York to the bearer or holder hereof in gold coin of the United States of America of the present standard of weight and fineness on the first day of October in the year one thousand nine hundred and forty-seven, with interest thereon at the rate of five per cent. per annum in the like gold coin, semi-annually in the city of New York on the first days of April and October in each year upon presentation and surrender of the coupons hereto attached and to become attached as they severally become due, such payment of principal and interest to be made as herein stipulated without deduction for any tax or assessment which the said railway company by any present or future laws of the United States or of the States of Indiana or Illinois may be required to pay or retain therefrom, the said railway company hereby agreeing to pay all said taxes or assessments.

174 This bond is one of a series of nineteen hundred and forty-two bonds each of one thousand dollars of like tenor and date numbered respectively from one to nineteen hundred and forty-two inclusive to be issued under and secured by a mortgage or deed of trust to the Farmers' Loan & Trust Company of New York and Noble C. Butler of the State of Indiana, trustees, bearing even date herewith and to be the first mortgage upon the railway *company* and franchises of said railway company as in said mortgage described, but this mortgage bond shall not become obligatory nor secured by said mortgage until authenticated by the certificate of the Farmers' Loan and Trust Company, trustee, of New York, endorsed thereon. Eighteen hundred of these bonds are reserved and held in trust by the Farmers' Loan and Trust Company for the retirement of a like amount of first-mortgage bonds of the Indianapolis, Decatur and

Springfield Railway Company and for the purposes of the sinking fund therein provided for.

This bond is payable without relief from valuation or appraisement laws.

In witness whereof the said Indianapolis, Decatur and Western Railway Company has caused its common seal and the signatures of its president and secretary to be hereto affixed the second day of January, 1888.

—— ——, *President.*

[SEAL.] —— ——, *Secretary.*

175 *Trustee's Certificate.*

The Farmers' Loan and Trust Company hereby certifies that this bond is one of the bonds described in the within-mentioned mortgage.

THE FARMERS' LOAN AND TRUST COMPANY,
By —— ——, *Vice-President.*

On and after January 1st, A. D. 1908, the Indianapolis, Decatur and Western Railway Company will deliver to the bearer of this bond when presented at its office or agency in the city of New York, a sheet of forty additional coupons of $25 each, covering the interest from said date to January 1st, 1928, to be attached to this bond, and on and after January 1st, 1928, said railway company will deliver as above a second additional sheet of forty coupons of $25 each, covering the interest from said date to January 1st, 1948, to be also attached to this bond. Delivery of such additional coupon sheets to be duly stamped upon the bond.

Now therefore, this indenture witnesseth, that the said party of the first part in consideration of the premises and for the better securing of the payment of the said bonds so to be made and executed to the total amount of one million nine hundred and forty-two thousand dollars ($1,942,000) in gold coin, as aforesaid and the interest thereon, and of the sum of ten dollars lawful money of the United States to it in hand paid by the said parties of the
176 second part the receipt whereof is hereby acknowledged has granted, bargained, sold, assigned, transferred released and confirmed and by these presents does grant, bargain, sell, assign, transfer, release and confirm unto the said parties of the second part and their lawful successors in this trust hereby created all and singular the railroad aforesaid of the said party of the first part being the line of railroad now known and designated as the Indianapolis, Decatur and Western Railway Company as the same is constructed from the city of Indianapolis in the State of Indiana, to the city of Decatur in the State of Illinois, together with all the real estate now owned by the said party of the first part wherever the same may be situated, all sidings and turnouts belonging to said party of the first part between the cities of Indianapolis and Decatur as aforesaid and all lands, rights of way, rails, bridges, tracks, walls, fences, viaducts,

culverts, buildings, depots, depot grounds, workshops, machinery, improvements, tenements and hereditaments now owned by the said party of the first part and used in the construction, operation or management of the said railroad between Indianapolis and Decatur as aforesaid together with all rolling stock, locomotives, tenders, cars, equipments, machinery, tools and implements, and all and singular the personal property of every kind, nature and description to the said party of the first part belonging, in use or intended for use upon the said railroad, or necessary for the proper equipment and operation of the same, also all and singular the lands, tenements, real
177 and personal estate, rolling stock, fixtures, corporate rights, powers, privileges and franchises of the said party of the first part now owned and possessed, or which it may hereafter acquire and use in or for the maintenance and operation of the said railroad between the cities of Indianapolis and Decatur as aforesaid or connected with or relating to the same, including the franchises to be and exist and exercise the powers of a corporation: And also all rights of way, streets, passages, water-courses, easements, rights, liberties, hereditaments and appurtenances whatsoever of the said party of the first part to any of the hereby granted premises and estates, belonging and appertaining and the reversions and remainders, rents, issues and profits thereof and all estate, right, title, interest, claim and demand of every kind and nature of the said party of the first part as well at law as in equity of, in and to the same, and every part and parcel thereof.

To have and to hold the same with the appurtenances unto the said party of the second —, their successors and assigns and for their only use and benefit, in trust, nevertheless for the use, benefit, behoof and security of the several persons bodies politic or corporate, their respective successors, administrators, executors or assigns who shall hereafter become the owners and holders of any of the said bonds to the amount of one million nine hundred and forty-two thousand ($1,942,000) dollars, intended to be issued hereunder and to be secured hereby without preference or priority of any
178 such bonds over any others irrespective of the actual date of issue of any bonds subject, however, to the right of the party of the first part its successors and assigns to retain the use, management, possession and enjoyment of the premises hereby granted or intended so to be until by reason of default by the said party of the first part in keeping and performing the several covenants and agreements in this indenture hereinafter contained, the said parties of the second part or their successors as hereinafter provided, shall be authorized to enter upon and take possession of or sell the same as hereinafter set forth.

And the conveyance being made on the terms and conditions hereinafter stated, to wit:

First. The said party of the first part, its successors or assigns will punctually pay to the holders of the bonds intended to be secured hereby, or that may be issued and accepted under this instrument, or in lieu, renewal or substitution of the same respectively, the interest thereon, semi-annually on the first days of April and

October in each year as the same shall respectively become due and payable according to the condition of the said bonds, and of the coupons thereto attached, and shall and will at the day and time mentioned in the said bonds when the said principal thereof shall according to the provisions hereof and of the said bonds become due and payable, fully and entirely pay off and satisfy the whole of the said bonds both principal and interest, such payment of principal and interest to be made in gold coin of the United States
179 of America of the present standard of weight and fineness, and without deduction from either of the said principal and interest for any tax or taxes, levies or assessments imposed or laid upon the premises, franchises and property hereby conveyed, or intended so to be, or upon the said bonds or upon any interest warrants thereon, either by the United States of America or by the States of Indiana or Illinois, the said party of the first part hereby covenanting and agreeing for itself, its successors or assigns to pay and satisfy any and all such taxes and assessments.

Second. That if the party of the first part, its successors or assigns shall at any time hereafter after demand made, make default, or refuse, neglect or omit for any period exceeding three months, to pay the semi-annual interest on any of the bonds intended to be hereby secured when the same shall become due and payable according to the coupons attached to such bonds, or shall refuse, neglect or omit for a like period of three months after maturity to pay the principal of each and all of said bonds, or shall neglect or refuse upon the lawful request of the said parties of the second part, their successors or assigns, to make such further conveyances or assurances as may be required under the provisions hereinafter contained, within sixty days after such lawful and sufficient request, then and in any or either of said cases the said parties of the second part, their successors or assigns, or the trustee or trustees for the time being under this indenture, shall be authorized and upon the request of the legal holders of one-fourth in amount of the said bonds then outstanding, on being
180 satisfactorily indemnified for so doing, shall be required to and will enter upon and take possession of all and singular the railroad estate and property, real and personal, premises and franchises hereby mortgaged or intended so to be, and shall thereupon operate, use and manage and control the said railroad, with its appurtenances and all the property real and personal hereby conveyed and shall appropriate the net income and proceeds derived therefrom after deducting the expenses of the trust and such sum or sums as may be sufficient to indemnify the trustee or trustees for the time being against any liability, loss or damage for or on account of any matter or thing done by them in good faith for the payment in full without preference, priority or distinction of one bond over another, first of the interest coupons and secondly of the principal of all bonds issued hereunder then outstanding and intended to be secured hereby in full if the said income be sufficient, otherwise, *pro rata* and equally; or if the said parties of the second part, their successor- or assigns or the trustee or trustees for the time

being under this indenture, after or without entry upon or taking such possession, in case of such default as aforesaid, upon the written request of the holders of one-fourth in amount of the bonds then outstanding, on being satisfactorily indemnified for so doing, shall proceed to sell the railroad, real and personal estate, property and fixtures, corporate rights and franchises, and all the premises and appurtenances hereby mortgaged, or intended so to be, to the best bidder at public sale in the city of New York, first giving three months' notice of said intended sale by publication to be made
181 twice in each week in at least two daily papers in said city of New York, and once in each week in a newspaper published in the city of Springfield, in the State of Illinois, and once in each week in a newspaper published in the city of Indianapolis, in the State of Indiana. And the said parties of the second part, their successors or assigns, or the trustee or trustees for the time being under this indenture are hereby expressly authorized and empowered in the event of such default and request as aforesaid, and upon making such advertisement to expose the said railroad property, franchises and premises aforesaid at public sale and to grant and convey the same to the purchaser or purchasers at such sale, free from all and every trust hereby created and without liability to see to the application of the purchase-money, and the said parties of the second part their successor- or assigns, or the trustee or trustees for the time being under this indenture shall appropriate such purchase-money after deducting the expenses of the trust, and of such sale, and any amount which may be necessary to indemnify to such trustee or trustees from and against any liability loss or damage on account of any matter or thing done by them in good faith in pursuance of their duties as such trustees, to the payment aforesaid first of the interest then due, and secondly of the principal of the bonds issued under this mortgage and then outstanding in full of said purchase-money be sufficient therefor and if not, then *pro rata* and equally, in the event of their being in the hands of said trustees for the time being, any portion of the trust estate or of the proceeds thereof, of the payment in full of the principal and interest of the said bonds the
182 *the* said trustee or trustees shall reconvey, retransfer and pay over the same to the party of the first part its successors or assigns for its and their sole use and benefit. And it is further covenanted and agreed by and between the parties aforesaid that in the event of any default in the payment of any instalment of interest which shall become due upon the bonds aforesaid or either of them, and in case such default shall continue and such interest remain unpaid for the period of six months after the same shall become due according to the terms of said bond and the coupons thereto attached, the whole principal of all of said bonds then outstanding shall become due and payable, provided that the holders of at least one-fourth in amount of the said bonds then outstanding shall so demand and request. Provided, however, that nothing in this section contained shall in any way interfere with or impair the right of the parties of the second part to institute legal proceedings

in any court of competent jurisdiction upon a default of six months in the payment of interest or principal of the bonds hereby secured and obtain a decree of foreclosure and judicial sale, without redemption of all and singular the property and franchises hereby conveyed.

Third. That it shall and may be lawful for the said party of the first part its successors and assigns by and with the consent in writing first had and obtained of the parties of the second part at any time or times hereafter, to exchange for other property, or sell all or any part of the premises hereby mortgaged, other than
183 the railroad track or superstructure aforesaid, which may not be necessary for railroad purposes and to convey the same without liability of the grantee for the disposition made of the purchase-money or of any property received in exchange therefor by the said parties of the first part and the said parties of the second part their successors, or the trustee or trustees under this indenture for the time being, shall and will on the request of the party of the first part, its successors or assigns execute all necessary releases for the purpose of any such sale or exchange. Provided, however, (and the party of the first part hereby covenants and agrees for itself and its successors) that the proceeds of any sale so made, if received in money or property shall be turned over from said purchasers to, and invested by the parties of the second part, either in improving the remaining part of the said premises hereby conveyed or in the purchase of other property, real or personal, which property so purchased, as also any acquired in exchange as aforesaid, shall be subject to all the trusts hereby declared of the property described in this indenture as fully to all intents and purposes as if the same had been mentioned and described herein and had been owned by the said party of the first part at the time of the execution of this instrument and the proceeds of any and all lands and premises for which other lands or investments as hereinbefore provided shall not within a reasonable time be substituted, shall be by said trustees applied to the purchase or redemption of bonds hereby secured and then outstanding which bonds shall when so purchased
184 or redeemed be cancelled and surrendered to the company, party of the first part.

Fourth. That the said party of the second part, their successors and assigns or the trustee or trustees under this indenture for the time being may in their discretion, at the request of the party of the first part or its successors, consent to any change in the location of the track of said railroad, or its depots, buildings or structures as may seem expedient, and the said party of the second part and their successors or the trustee or trustees under this indenture for the time being, are hereby authorized to make and deliver all releases conveyances or other instruments necessary and proper to effect such change, and the party of the first part hereby — and agrees that whenever it or its successors or assigns shall acquire any land, equipment, property or franchises of any nature or description for the use, operation and maintenance of its said railroad line between the cities of Indianapolis and Decatur aforesaid it will hold the

same upon and subject to the trusts of this indenture until conveyance thereof shall have been made and duly delivered to the parties of the second part and their successors and shall and will whenever requested execute and deliver all such further deeds, transfers, conveyances and assurances for the better assuring to the said parties of the second part and their successors of any such railroad land, tenements, property or franchises, to which the said party of the first part, or its successors may hereafter become entitled or
185 may in any manner acquire for the uses of the said railroad between the cities of Indianapolis and Decatur as aforesaid as by the said parties of the second part and their successors or by their counsel learned in the law, shall be reasonably required.

Fifth. That the said parties of the second part the trustees hereby constituted or any of their successors in this trust, or any or either of them, may resign the trusts hereby imposed and be discharged therefrom by giving ninety days' previous notice in writing to the said party of the first part its successors or assigns and in case of the dissolution or termination of the corporate existence of the said Farmers' Loan and Trust Company of New York, one of the parties of the second part, or of any removal by a competent court or of any removal or incapacity to act as a trustee or of any resignation as aforesaid, the party of the first part or its successors may by dis-olution of its board of directors at a meeting thereof duly convened and held appoint a new trustee in the place and stead of the trustee so resigning, neglecting, refusing or becoming unable to act and so from time to time the place of said trustees, or either of them, may be filled in like manner.

And in case the said party of the first part or its board of directors shall neglect or refuse to appoint such new trustee within three months after a vacancy shall occur by such resignation, dissolution or refusal or incapacity to act or in case any trustee so appointed to fill such vacancy shall not be satisfactory to the holders
186 of a majority in amount of the bonds by the said mortgage secured and then outstanding, the holders of such majority in amount of such bonds may by writing under their hands and seals appoint a new trustee to fill such vacancy, and such appointment so made shall supersede any previously made by the party of the first part with- three months next preceding such appointment by a majority of the bondholders as aforesaid, and any trustee or trustees so nominated and appointed by the said party of the first part, or its successors, or by such majority of the bondholders under this indenture, shall have the same powers and be subject to the same trusts, stipulations and conditions by this indenture conferred and imposed upon the parties of the second part hereto, and all trusts, powers and duties hereby created and imposed upon the said parties of the second part, shall extend to and be performed and executed by any such substituted trustee or trustees as fully as they can or may be by the partfes of the second part herein named, and the said parties of the second part their successors or assigns and any and every trustee substituted or appointed in this trust pursuance to the provision of this indenture.

And also the said party of the first part shall, in case of change in the trustees as hereinbefore provided, when lawfully thereunto required execute any conveyance or other instrument necessary and proper for the purpose of conveying or assuring the necessary
187 estate in the premises and for the vesting of the necessary powers in the trustees so appointed. And it is further covenanted and agreed that this trust will not cease or be determined in case of any vacancy in the trust or any omission in anything hereinbefore contained until all and singular the provisions of this instrument shall have been executed and performed and the bonds secured by this instrument shall have been paid and satisfied, both principal and interest, or the property and premises hereby conveyed shall have been applied in full to the satisfaction thereof, and in case of any change in the said trustees as hereinbefore provided, the trustee or trustees for the time being or their lawful representative shall retain the legal title so far as it may be necessary to preserve the trust until its or their successors shall have been lawfully appointed according to the provisions of this instrument, whereupon all estate, right, title, interest, power and control of the said previous trustees or their representatives, shall cease and determine and the new trustee or trustees so substituted and appointed shall become and be vested with all the estate, power and authority granted and created or intended so to be by this indenture.

Sixth. It is hereby expressly covenanted and agreed that *if* the bonds to be issued under and secured by this indenture eighteen hundred thousand dollars and the proceeds thereof shall be used and applied only in the payment, extinguishment or satisfaction of the bonds heretofore issued under the mortgage hereinbefore described of the 31st day of December, 1875, including any such bonds as may have been called and redeemed under the
188 sinking fund clause contained in the said mortgage and the remaining one hundred and forty-two thousand dollars shall be used and applied solely for the purposes of the company in its organization as prescribed, and it is further provided that the said eighteen hundred thousand dollars first above specified shall be used and applied to no other purpose whatsoever until all the said bonds of 1875 and all interest due or payable thereon shall have been duly paid, satisfied or cancelled, either by exchange or substitution of the bonds to be issued under this indenture for such outstanding bonds or by payment with the proceeds of the same, and the said parties of the second part and their successors shall not certify or issue or deliver any bonds under this indenture or to be secured thereby except in exchange for such bonds outstanding, or which shall have been redeemed by the said party of the first part under and according to the provisions of the said sinking-fund clause, contained in the said mortgage of December 31st, 1875, or in the payment for such bonds until all such bonds shall be fully paid and satisfied or cancelled by exchange, excepting only the one hundred and forty-two thousand dollars hereinbefore specified and each and every of such eighteen hundred bonds as aforesaid shall be issued simultaneously only, or after the actual surrender and

cancellation of a like amount of such bonds secured by the mortgage to James Emmott and John J. Crane, as aforesaid.

189 Seventh. It is expressly covenanted and agreed by and between the parties aforesaid that no bonds shall be issued under or secured by this indenture or shall be valid or binding as the bonds hereby provided for, until and unless the same, after having been duly executed by the party of the first part, shall be certified by the Farmers' Loan and Trust Company of New York one of the said parties of the second part, or its successors in trust to be one of the bonds issued under this indenture and secured hereby.

Eighth. The said parties of the second part and their successors in this trust shall be entitled to just compensation for the services rendered by them or either of them in the execution thereof and shall be reimbursed any necessary expenditures including the expenses of all necessary attorneys, counsel or agents in and about said trust to be paid by the party of the first part or its successors.

And it is expressly covenanted and agreed, and this trust is accepted upon condition that the parties of the second part and their successors and any trustee or trustees duly appointed and acting under this indenture or in the discharge of the said trust shall not, nor shall any of — incur any liability or responsibility in consequence of permitting or suffering the party of the first part to retain or be in possession of the railroad property, estate or premises hereby mortgaged or intended so to be, or any part thereof,

190 or use and enjoy the same, nor for any destruction, deterioration, loss, injury or damage which may be done or occur to such railroad, estate or property either by the said party of the first part or its agents, or servants, or by any other person or persons nor for the consequences of any breach on the part of the said parties of the first part or its successors of any of the covenants herein contained, nor for any act of the said party of the first part its agents or servants, nor for any act, matter or thing, except its or their own wilful or intentional breach of the trust herein expressed and contained. In case at any time it shall be necessary and proper for the trustees to make any investigation respecting any facts preparatory to taking or not taking any action, or doing or not doing anything as such trustee, the certificate of the party of the first part under its corporate seal attested by the signature of its president and the affidavit of one or more directors shall be conclusive evidence of such fact to protect the trustee in any action that it may take by reason of the supposed existence of such fact. But this indenture is made and delivered upon the express condition and provided that if the said party of the first part its successors or assigns shall and do well and truly pay or cause to be paid to the person or persons, bodies politic, or corporate who shall become the holders of the bonds secured hereby, to the several and respective amounts expressed therein and payable according to the tenor thereof, and if the coupons thereto attached on the days and times therein mentioned, being the

191 principal and lawful interest thereon, in accordance with the provisions of said bonds and of this indenture without any

fraud or delay, and shall keep and perform all the conditions hereof, then and from thenceforth this indenture and the estate hereby granted and conveyed or intended so to be and all the said bonds and obligations shall become void and of no effect anything hereinbefore contained to the contrary notwithstanding and satistory shall be forthwith executed, certified by the said parties of the second part or their successors, or the trustee or trustees for the time being, upon the record of this indenture of mortgage so as to immediately and fully revest the party of the first part with the premises hereby granted in law, and in fact, without any entry or further act.

In witness whereof the said Indianapolis, Decatur and Western Railway Company has caused this instrument to be signed by the president and attested by the secretary of the said corporation and its corporate seal to be hereto affixed this 2nd day of January, 1888 under and by virtue of a resolution of the board of directors for that purpose made and obtained, as and for act and deed of the said Indianapolis, Decatur and Western Railway Company, and the said Farmers' Loan and Trust Company of New York, in like manner has caused the same to be signed by its president and its corporate seal to be thereto affixed this 2nd day of January, 1888 as and for the solemn act and deed of the said Farmers' Loan and Trust
192 Company of New York, and the said Noble C. Butler has hereunto set his hand and seal this 2nd day of January, 1888 as and for his free act and deed.

INDIANAPOLIS, DECATUR AND WESTERN RAILWAY CO.,
By H. B. HAMMOND, *President.*

[SEAL.]

Attest: THOMAS B. ATKINS, *Secretary.*

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

[SEAL.]

Attest: WM. H. DUFFY, *Sec'y.*

NOBLE C. BUTLER.

STATE OF NEW YORK, *City and County of New York,* } *ss:*

Be it remembered that on this first day of March, A. D. 1888, before me, Charles Nettleton, a commissioner for the State of Illinois in and for the State of New York, personally appeared Henry B. Hammond, president of the Indianapolis, Decatur and Western Railway Company, who is personally know- to me to be the same person described in and who executed the foregoing instru-
193 ment of writing, and he, being duly sworn, doth depose and say that he was personally present at the execution of the foregoing instrument and saw the common seal of said company

duly affixed thereto, and that the seal so affixed is the common seal of said company, and that said instrument was signed, sealed, and delivered by him as and for the act and deed of said company for the uses and purposes therein mentioned, and that the name of this deponent subscribed to said instrument as president of said company in attestation of the due execution and delivery of the said instrument is in this deponent's own proper handwriting.

In witness whereof I have hereunto set my hand and affixed my official seal this first day of March, A. D. 1888.

CHARLES NETTLETON,
[SEAL.] *Commissioner for Illinois in New York,*
115 *and* 117 *Broadway, N. Y. City.*

STATE OF NEW YORK, }
City & County of New York, } *ss:*

Personally appeared before me, Charles Nettleton, a commissioner of the State of Indiana in and for the State of New York, residing in said city of New York, this first day of March, A. D.
194 1888, Henry B. Hammond, president of the Indianapolis, Decatur and Western Railway Company, and acknowledged that he executed the foregoing instrument as the free act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this first day of March, A. D. 1888.

CHARLES NETTLETON,
[SEAL.] *Commissioner for Indiana in New York.*
115 *and* 117 *Broadway, N. Y. City.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Personally appeared before me Charles Nettleton, a commissioner of the State of Indiana in and for the State of New York, residing in the city of New York, this first day of March, A. D. 1888, Roswell G. Rolston, president of the Farmers' Loan and Trust Company, and acknowledged that he executed the foregoing instrument as the free act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this 1st day of March, A. D. 1888.

CHARLES NETTLETON,
[SEAL.] *Commissioner for Indiana in New York,*
115 *and* 117 *Broadway, N. Y. City.*

195 STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this 1st day of March, A. D. 1888, before me, Charles Nettleton, a commissioner of the State of Illinois in and for the State of New York, residing in said city of New York, personally appeared Roswell G. Rolston, president of the Farmers' Loan and Trust Company, who is personally known to me to be the same person described in and who executed the foregoing in-

strument of writing, and he, being duly sworn, doth depose and say that he was personally present at the execution of the foregoing instrument and saw the common seal of said company duly affixed thereto, and that the seal so affixed is the common seal of said company, and that said instrument was signed, sealed, and delivered by him as and for the act and deed of said company for the uses and purposes therein mentioned, and that the name of this deponent subscribed to said instrument as president of said company in attestation of the due execution and delivery of the said instrument is in this deponent's own proper handwriting.

In witness whereof I have hereunto set my hand and affixed my official seal this first day of March, A. D. 1888.

CHARLES NETTLETON,
[SEAL.] *Commissioner for Illinois in New York,*
115 *and* 117 *Broadway, N. Y. City.*

196 STATE OF INDIANA, } ss:
County of Marion, }

On this 3rd day of March, A. D. 1888, before me, Christian H. Stein, a notary public within and for the county and State aforesaid, personally appeared Noble C. Butler, trustee, etc., who is personally known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he had signed, sealed, and delivered said instrument as his free act and deed for the uses and purposes therein expressed.

Witness my hand and notarial seal this third day of March, A. D. 1888.

CHRISTIAN H. STEIN,
[SEAL.] *Notary Public.*

Filed and recorded March 8th, 1888.
HENRY E. RIVES, *Recorder.*

STATE OF ILLINOIS, } ss:
Edgar County, }

I, J. L. Vance, circuit clerk and *ex officio* recorder, do hereby certify that the above is a copy of mortgage filed in this office March 8th, 1888.

[SEAL.] J. L. VANCE, *Recorder.*

197 *Mortgage.*

Indianapolis, Decatur & Western Railway Company }
to
Farmers' Loan and Trust Company. }

This indenture, made this 2nd day of January, A. D. 1888, between the Indianapolis, Decatur & Western Railway Company, a corporation constituted by the consolidation of the Indianapolis & Wabash Railway Company, being a corporation organized under the laws of the State of Indiana, and the Indianapolis, Quincy and Missouri River Railway Company, a corporation organized under

the laws of the State of Illinois, party of the first part, and the Farmers' Loan and Trust Company of New York and Noble C. Butler of the city of Indianapolis, in the State of Indiana, as trustee, parties of the second part.

Whereas, the said party of the first part is the owner of a line of railroad extending from the west line of the State of Indiana, to Decatur, in the State of Illinois, which was formerly the property of the Indianapolis, Decatur and Springfield Railway Company, together with the lands, tenements and hereditaments acquired for the right of way of said railway and all the appurtenances thereunto belonging, and also the lands in the State of Illinois acquired for depots, superstructures, buildings and erections, on the said line of railroad in the said State; and also the bridges, viaducts, culverts, fences, buildings and superstructures appertaining thereto and all of the real and personal property of every kind whatsoever in the said State of Illinois, in any manner appertaining to or used upon the said railroad, and the franchises, powers and privileges relating to or necessary to the use and enjoyment of the said rail-
198 road, which were formerly vested in the Indianapolis, Springfield and Decatur Railway Company in the said State, and also of all and singular the line of railroad in the State of Indiana, extending from the city of Indianapolis westward to the east line of the State of *Indiana*, connecting with and being a continuation of the railroad line hereinbefore described, together with the lands and tenements and hereditaments acquired for the right of way of said railroad, and all the appurtenances thereunto belonging, and also the lands in the State of Indiana acquired for depots, superstructures, buildings and erections on the said line of railroad in the State of Indiana, with the tracks, bridges, viaducts, culverts, fences, buildings and superstructures appertaining thereto, and of all real and personal property of every kind whatsoever in said State of Indiana, in any manner appertaining to or used upon the said railroad in its management or operation, which said real estate, railway and appurtenances constituted a line of railway extending from the city of Indianapolis in the State of Indiana westward through the States of Indiana and Illinois to Decatur in the State of Illinois, and to which line of railroad there is appurtenant and now in use upon the same rolling stock, consisting of locomotives, cars and other materials suitable or necessary for the purpose thereof;

And whereas, the stockholders of the Indianapolis, Decatur & Western Railway Company, at a meeting duly called and holden at the city of Indianapolis, did by a unanimous vote of the stockholders of said corporation pass and adopt the following resolution:

Resolution.

199 Resolved, by the stockholders of the Indianapolis, Decatur and Western Railway Company, that the directors of the company for its corporate uses and purposes are hereby authorized to execute and negotiate bonds to the amount of one million, four

hundred and nineteen thousand dollars bearing five per cent. interest, and secure the same by a second mortgage or deed of trust conveying all the property, appurtenances and franchises of this company.

And whereas, at a meeting of the board of directors of the Indianapolis, Decatur and Western Railway Company, duly held, it was resolved, in pursuance of such consent and authority duly given by the said stockholders that a mortgage should be made and issued upon the property and franchises of the said company to be the first mortgage thereupon, and to secure nineteen hundred and forty-two bonds of one thousand dollars each, which said mortgage has been heretofore made, executed and delivered, pursuant to such authority and it was further resolved that a second mortgage should be made and executed to the parties of the second part herein, dated January 2d, 1888, upon all the railroad, real and personal estate, property and equipment, corporate rights and franchises of the said company, which at the date of said mortgage should be owned and possessed by the said company to secure fourteen hundred and nineteen bonds of one thousand dollars ($1,000) each, with interest payable semi-annually at the rate of five per cent. per annum on the first days of January and July of each year in gold coin of the United States, and the principal thereof payable sixty years from the date of said bonds, also in like gold coin, which said bonds should be used exclusively for the purpose of fulfilling and carrying out the agreement of the second-mortgage bondholders
200 of the Indianapolis, Decatur & Springfield Railway Company, dated 30th day of May, 1885, and that the president of the said railway company should be authorized to affix the corporate seal of the said railway company to the said mortgage, and to each of the said fourteen hundred and nineteen (1,419) bonds and to sign the same as president, and that the secretary should be authorized to attest the execution thereof, which bonds with the coupons or interest warrants attached thereto and the certificate of the trustee to be thereupon endorsed are to be of the tenor and effect following:

$1,000.00.	UNITED STATES OF AMERICA.	$1,000.00.
No. —.	*Second-mortgage Bond.*	No. —.

M. Indianapolis, Decatur and Western Railway Company. M.

The Indianapolis, Decatur and Springfield Railway Company, for value received, acknowledges itself indebted to the holder hereof in the sum of one thousand dollars, which it promises to pay in gold coin of the United States of the present standard of weight and fineness in the city of New York, on the first day of January in the year one thousand nine hundred and forty-eight, and to pay interest thereon at the rate of five per cent. per annum, semi-annually, in the city of New York, in like gold coin, upon presentation and surrender of the coupons hereto attached on the first days of January and July in each year, as they respectively become payable, without

deduction for any tax or assessment of the United States or of the States of Indiana or Illinois. The first ten coupons of the bonds of this issue are payable only out of the net earnings and income of said railway company, from its railroad, in each current half year, ending on the first day of April and the first day of October
201 next preceding the day fixed for the payment of the semi-annual interest hereon, as the same may be declared by the board of directors of said company, and after paying from said income all moneys required for the payment of coupons of first-mortgage bonds and of any sinking fund prescribed for the redemption thereof, any deficiency whether partial or total shall not be accumulative nor made up out of any surplus income of subsequent years.

This bond is one of fourteen hundred and nineteen bonds of similar amount, tenor and effect referred to in a mortgage made by the Indianapolis, Decatur and Western Railway Company to the Farmers' Loan and Trust Company of New York and Noble C. Butler, of the State of Indiana, trustee, bearing even date herewith, to secure the payment of such bonds and to be the second mortgage upon the property and franchises of the said company, and when the certificate hereon endorsed is signed by the said Farmers' Loan and Trust Company of New York this bond will be entitled to the lien and security of the said mortgage.

This bond is payable without relief from valuation or appraisement laws.

In witness whereof, the said Indianapolis, Decatur and Western Railway Company has caused its common seal and the signature of its president and secretary to be hereto affixed, the second day of January, 1888.

[SEAL.]

—— ——, *President.*
—— ——, *Secretary.*

202 *Trustee's Certificate.*

The Farmers' Loan and Trust Company hereby certifies that this bond is one of the bonds described in the within-mentioned mortgage.

THE FARMERS' LOAN AND TRUST COMPANY,
By —— ——, *Vice-President.*

On and after Oct. 1st, A. D. 1907, the Indianapolis, Decatur and Western Railway Company will deliver to the bearer of this bond when presented at its office or agency in the city of New York, a sheet of forty additional coupons of $25.00 each, covering the interest from said date to October 1st, 1927, to be attached to said bond; and on — after October 1st, 1927, said railway company will deliver as above, a second additional sheet of forty coupons of $25.00 each covering the interest from said date to October 1st, 1947, to be also attached to this bond. Delivery of such additional coupon sheets to be duly stamped upon the bond.

The holder of this bond when duly registered *upon* the purpose

shall have the right to vote at all meetings of stockholders, the principal hereof being considered in voting equivalent to ten shares of the capital stock of this company.

The first ten coupons of said bonds shall notwithstanding the recital aforesaid in said bonds, be in fact what are known as exchange coupons, and exchange coupons shall only be due and exchangeable as in manner provided in the agreement of May 30th, 1885, when said new company shall have paid the accrued interest on the first-mortgage bonds or debentures or debt certificates as the same shall have become due and payable and the appropriations necessary for the sinking fund of said first mortgage or deed
203 of trust of the Indianapolis, Decatur and Springfield Railway Company, to retire said first-mortgage bonds as thereby contemplated. Thereafter such exchange coupons shall be exchangeable unto the said debentures or debt certificates to an amount equal to the amount appropriated to the sinking fund and for such dividends as said company may declare, not to exceed five per cent. per annum, out of any surplus net revenue after paying said above-mentioned interest charges and appropriations to said sinking fund; and only the failure to pay the eleventh and every succeeding coupon when due until all of said second-mortgage bonds are paid, redeemed and cancelled, shall permit an action of foreclosure of this mortgage or deed of trust, made to secure the same.

And this clause hereinbefore recited shall be deemed a contract with each bondholder intended to be secured under this mortgage notwithstanding such bonds may contain terms inconsistent with this mortgage and less favorable to such bondholder, and the party of the first part is to be regard- estopped from claiming any benefit in regard to such first ten coupons attached to such bonds arising from anything therein contained inconsistent herewith.

Now therefore, this indenture witnesseth, that the said party of the first part in consideration of the premises and for the better securing the payment of the said bond so to be made and executed to the total amount of one million four hundred and nineteen thousand dollars ($1,419,000) in gold coin as aforesaid, and the interest thereon, and of the sum of ten dollars lawful money of the United States to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bar-
204 gained, sold, assigned, transferred, released and confirmed and by these presents does grant, bargain, sell, assign, transfer, release and confirm unto the said parties of the second part and their lawful successors in the trust hereby created all and singular the railroad aforesaid of the said parties of the first part, being the line of said railroad now known and designated as the Indianapolis, Decatur and Western railway, as the same is constructed from the city of Indianapolis, in the State of Indiana, to the city of Decatur in the State of Illinois, together with all the real estate now owned by the said party of the first part wherever the same may be situated, all sidings and turnouts belonging to the said party of the first part, between the city of Indianapolis and Decatur as aforesaid, and all lands, right of way, rails, bridges, tracks, walls,

fences, viaducts, depot grounds, workshops, machinery, improvements tenements hereditaments, now owned by the said party of the first part and used in the construction, operation or management of the said railroad between the said cities of Indianapolis and Decatur as aforesaid, together with all rolling stock, locomotives, tenders, cars, equipments, machinery, tools, and implements, and all and singular the personal property of every kind, nature and description, to the said party of the first part belonging, in use or intended for use upon the said railroad, or necessary for the proper equipment or operation of the same, also all and singular the corporate rights, powers, privileges and franchises of the said party of the first part now owned and possessed or which it may hereafter acquire and use in the maintenance and operation of the said railroad between the cities of Indianapolis and Decatur as afore-
205 said, or connected with or relating to the same, including the franchises to be and exist, and exercise the powers of a corporation, and also all right of way, streets, passages, water-courses, easements, rights, liberties, hereditaments and appurtenances whatsoever of the said party of the first part, or to any of the hereby granted estates belonging and appertaining and the reversion and remainders, rents, issues and profits thereof, and all estate, right, title, interest, claim and demand of every kind and nature of the said party of the first part, as well at law as in equity of, in and to the same and every part and parcel thereof.

To have and to hold the same with the appurtenances unto the said party of the second part, their successors and assigns to and for their only use and benefit, in trust nevertheless, for the use, benefit, behoof and security of the several persons, bodies politic or corporate, their respective successors, administrators, executors or assigns who shall hereafter become the owners and holders of any of the said bonds to the amount of one million four hundred and nineteen thousand dollars ($1,419,000) intended to be conveyed hereunder, and to be secured hereby without preference *to* priority of any such bonds over any others irrespective of the actual dates of the issue of such bonds, subject however to the said first mortgage of the first part- dated the 2nd day of January, 1888, made to secure the issue of nineteen hundred and forty-two bonds of one thousand dollars each, and its terms and provisions as hereinbefore mentioned and described, and subject also to the right of the party of the first part, its successors and assigns, to retain the use, management, possession and enjoyment of the premises hereby
206 granted or intended so to be, until by reason of default by the said party of the first part in keeping and performing the several covenants and agreements in this indenture contained the said parties of the second part or their successors as hereinafter provided shall be authorized to enter upon and take possession of, or sell the same as hereinafter set forth and this conveyance being made on the terms and conditions hereinafter stated, to wit:

First. The said party of the first part, its successors or assigns, will punctually pay to the holders of the bonds intended to be secured hereby or that may be issued and accepted under this instru-

ment, or in lieu, renewal or substitution of or for the same respectively, the interest thereon semi-annually on the first days of January and July in each year as the same shall become due and payable according to the conditions of the said bonds and of the coupons thereto attached; and shall and will at the date and time mentioned in the said bonds when the said principal sum thereof shall, according to the provisions hereof and of the said bonds become due and payable, fully and entirely pay off and satisfy the whole of the said bonds, both principal and interest, such payment of principal and interest to be made in gold coin of the United States of America of the present standard of weight and fineness, and without deduction for either the said principal and interest for any taxes, levies or assessments imposed or laid upon the premises, franchises and property hereby conveyed or intended so to be or upon the said bonds or upon any interest thereon either by the United States of America or by the States of Indiana and
207 Illinois, the said party of the first part hereby covenanting and agreeing for itself, its successors and assigns, to pay and satisfy any and all such taxes and assessments.

Second. That if the said party of the first part, its successors or assigns, shall at any time hereafter, after demand made, make default or refuse, neglect or omit for any period exceeding three months to pay the semi-annual interest of any of the bonds intended to be hereby secured when the same shall become due and payable according to the coupons attached to such bonds, or shall refuse, neglect or omit for a like period of three months after maturity to pay the principal of each and all of such bonds, or shall neglect or refuse upon the lawful request of the said parties of the second part, their successors or assigns, to make such further conveyances or assurances as may be required under the provisions herein contained, within sixty days after such lawful and sufficient request, then and in any or either of the aforesaid cases the said parties of the second part, their successors or assigns, or the trustee or trustees for the time being under this indenture shall be authorized and upon the written request of the holders of half in amount of the said bonds then outstanding shall be required to and will enter upon and take possession of all and singular the railroad estate and property, real and personal, premises and franchises hereby mortgaged or intended so to be, and shall thereupon operate, use, manage and control the said railroad with its appurtenances, and all the property, real and personal hereby conveyed, and shall appropriate the net income and proceeds derived therefrom after deducting the expenses of the trust and such sum or sums as may be
208 sufficient to indemnify the trustee or trustees, for the time being against any liability loss or damage for or on account of any matter or thing done by them in good faith, to the payment in full without preference, priority or distinction of one bond over another, first of the interest coupons, and secondly of the principal of all bonds issued hereunder then outstanding and intended to — secured hereby in full, if the said income be sufficient, otherwise *pro rata* and equally, or the said parties of the second part or as-

signs, or the trustee or trustees for the time being under this indenture after or without entry upon or taking possession, in case of such default as aforesaid, upon the written request of the holders of one-half in amount of the bonds then outstanding, shall proceed to sell the railroad, real and personal estate, property and fixtures, corporate rights and franchises, and all the premises and appurtenances hereby mortgaged or intended so to be, to the best bidder at public sale, in the city of New York, first giving at least three months' notice of said intended sale by publication to be made twice in each week in at least two daily newspapers published in the city of New York, and once in each week in a newspaper published in the State of Illinois, and once in each week in a newspaper published in the said State of Indiana. And the said parties of the second part, their successors or assigns, or the trustee or trustees for the time being under this indenture are hereby expressly authorized and empowered in the event of such default and request as aforesaid, and upon making such advertisement, to expose the said railroad property and franchises and premises as aforesaid at public sale, and to grant and convey the same to the purchaser or
209 purchasers at such sale free from all and every trust hereby created and without liability to see to the application of the purchase-money, and the said parties of the second part, their successors or assigns, or the trustee or trustees for the time being under this indenture shall appropriate such purchase-money after deducting the expenses of this trust and of such sale, and any amount which may be necessary to indemnify such trustee or trustees from and against any liability, loss or damage on account of any matter or thing done by them in good faith, in pursuance of their duty as such trustees, to the payment aforesaid, first of the interest then due, and secondly of the principal of the bonds issued under this mortgage and then outstanding in full if the said purchase-money be sufficient therefor, and if not then *pro rata* and equally. In the event of there being in the hands of said trustee or trustees for the time being any portion of the trust estate, or of the proceeds thereof after the payment in full of the principal and interest of the said bonds, the said trustee or trustees shall reconvey, retransfer and pay over the same to the party of the first part, its successors or assigns for its or their sole use and benefit, and it is further covenanted and agreed by and between parties aforesaid, that in the event of any default in the payment of any installment of interest which shall become due upon the bonds aforesaid or any of them, and in case such default shall continue and such interest shall remain unpaid for a period of six months after the same shall become due according to the terms of said bonds and the coupons thereto attached, the whole principal of all the said bonds then outstanding shall become due and payable provided that the holders of at least one-
210 half in amount of the said bonds then outstanding shall so demand and request. Provided, however, that nothing in this section contained shall in any way interfere with or impair *with* the right of the parties of the second part to institute and legal proceedings in any court of competent jurisdiction upon a default

of six months in the payment of interest or principal of the bonds hereby secured and obtain a decree of foreclosure and a judicial sale without redemption—redemption of all and singular the property and franchises hereby conveyed.

Third. That it shall and may be lawful for the said party of the first part, its successors or assigns, at any time or times hereafter, with the written consent of the parties of the second part, to exchange for other property, or to sell all or any part of the premises hereby mortgaged other than the railroad track and superstructures aforesaid which may not be necessary for railroad purposes, and to convey the same without liability on the part of the grantee for the distribution made of the purchase-money, or any property received in exchange therefor by the said party of the first part, and the said parties of the second part, or their successors or the trustee or trustees under this indenture for the time being, shall and will, on the request of the party of the first part, its successors or assigns, execute all necessary releases for the purposes of any such sale or exchange; and the party of the first part hereby covenants and agrees for itself and its successors that the proceeds of any sale so made if received in money or property, shall be turned over direct
from such purchasers and be invested by the parties of the
211 second part either in improving the remaining part of the
premises hereby conveyed or in the purchase of other property real or personal, which property so purchased as also any acquired in exchange as aforesaid shall be subject to all the trusts hereby declared of the property described in this indenture, as fully to all intents and purposes as if the same had been mentioned and described therein and had been owned by the said party of the first part at the time of the execution of this instrument and the proceeds of any and all lands and premises for which others shall not, within a reasonable time, be substituted, shall be by said trustee applied to the purchase or redemption of first-mortgage bonds of the Indianapolis, Decatur and Western Railway Company or first-mortgage bonds of the Indianapolis, Decatur & Springfield Railway Company then outstanding, which bonds shall when so purchased or redeemed be cancelled and surrendered to the railway company, party of the first part.

Fourth. That the said party of the second part, their successors or assigns or the trustee or trustees under this indenture for the time being, may in their discretion, at the request of the parties of the first part, or its successors, consent to any change in the location of the track of the said railroad or its depots, buildings or structures as may seem expedient, and the said parties of the second part and their successors or the trustee or trustees under this indenture for the time being are hereby authorized to make and deliver all releases, conveyances or other instruments necessary and proper to effect such change, and the party of the first
part hereby covenants and agrees that, whenever it
212 or its successors or assigns shall acquire any land, equipment, property or franchise of any nature or description, for the use, operation and maintenance, of the said line between the

cities of Indianapolis and Decatur aforesaid, it will hold the same upon and subject to the trusts of this indenture until conveyance thereof shall have been made and delivered to the parties of the second part or their successors and shall and will whenever so requested execute and deliver all such further deeds, transfers, conveyances and assurances for the better assuring to the parties of the second part and their successors any such railroad lands, tenements, property or franchises to which the said parties of the first part or its successors may hereafter become entitled, or may in any manner acquire for the uses of said railroad between the cities of Indianapolis and Decatur as aforesaid, as by the said parties of the second part or their successors or by their counsel learned in the law shall be reasonably required.

Fifth. That the said parties of the second part, the trustees hereby constituted, or any of their successors in this trust or any or either of them, may resign the trusts hereby imposed and be discharged therefrom by giving ninety days' notice in writing to the said party of the first part, its successors or assigns, and in case of the dissolution or termination of the corporate existence of the said Farmers' Loan and Trust Company of New York, one of the parties of the second part hereto or of any removal by a competent court or of any refusal or incapacity to act as trustee or of any resignation as aforesaid the party of the first part, or its successors, may by
213 resolution of its board of directors at a meeting thereof duly convened and held appoint*ed* a new trustee in the place and stead of the trustee so resigning, neglecting, refusing or becoming unable to act, and so from time to time the place of said trustees or either of them may be filled in like manner, and in case the said party of the first part or its board of directors shall neglect or refuse to appoint such new trustees within three months after a vacancy shall occur by such resignation, dissolution or refusal or incapacity to act or in case any trustee so appointed to fill such vacancy shall not be satisfactory to the holders of a majority in amount of the bonds by the said mortgage secured and then outstanding, the holders of such majority in amount of such bonds, may, by a writing under their hands and seals, appoint a new trustee to fill such vacancy and such appointment so made shall supersede any previously made by the party of the first part within three months next preceding such appointment by a majority of the bondholders as aforesaid, and any trustee or trustees so nominated and appointed by said party of the first part or its successors, or by such majority of the bondholders under this indenture, shall have the same powers and be subject to all the trusts, stipulations and conditions by this indenture conferred and imposed upon the parties of the second part hereto, and all trusts, powers and duties hereby created or imposed upon the said parties of the second part, shall extend to and be performed by any such substituted trustee or trustees, as fully as they can or may by the parties of the second part, their successors or assigns, and any and every trustee substituted or appointed in this trust pursuant to the provisions of this inden-

ture and also the said party of the first part, shall in
214 case of change in the trustee as hereinbefore provided, when lawfully thereto required, execute any conveyances or other instruments necessary and proper for the purpose of conveying or assuring the necessary estate in the premises, and for the vesting of the necessary powers in the trustee so appointed. It is further covenanted and agreed that this trust shall not cease or be determined in case of any vacancy in the trust or any omission in anything hereinbefore contained until all and singular the provisions of this instrument shall have been executed and performed, and the bonds secured by this instrument shall have been paid and satisfied, both principal and interest *at* the property and premises hereby conveyed shall have been applied in full to the satisfaction thereof; and in case of any change in the said trustees as hereinbefore provided, the trustee or trustees for the time being or their lawful representatives shall retain the legal title so far as it may be necessary to preserve the said trust until it or their successors shall have been lawfully appointed according to the provisions of this instrument, whereupon all estate, right, title, interest, power and control of the previous trustees or their representatives shall cease and determine and the new trustee or trustees so substituted and appointed shall become and be vested with all the estate, power and authority granted and created or intended so to be by this indenture.

Sixth. It is hereby expressly covenanted and agreed that the bonds to be issued under and secured by this indenture shall be used and employed exclusively for the purpose of carrying out the agreement of the second-mortgage bondholders of the Indian-
215 apolis, Decatur and Springfield Railway Company May 30th, 1885, and the several agreements of the committee of said bondholders with the Indianapolis & Wabash Railway Company and the Indianapolis, Quincy and Missouri River Railway Company, and all of which bonds shall be delivered to the trustees in said agreement named, by the parties of the second part, to enable them, the said trustees, to carry out this trust.

Seventh. It is expressly covenanted and agreed by and between the parties aforesaid that no bond — shall be issued under or secured y this indenture shall be valid or binding as one of the bonds hereby provided for, until and unless the same after having been duly executed by the party of the first part shall be certified by the said Farmers' Loan and Trust Company of New York, one of the said parties of the second part, or its successors in said trust, to be one of the bonds issued under this indenture and secured hereby.

Eighth. The said parties of the second part and their successors in this trust shall be entitled to just compensation for services rendered by them or either of them in the execution thereof and shall be reimbursed any necessary expenditures including the expenses of all necessary attorneys, counsels and agents in and about said trust to be paid by the party of the first part or its successors. And it is expressly covenanted and agreed and this trust is accepted upon the condition that the parties of the second part and their successors

and any trustee or trustees duly appointed and acting under
216 this indenture or in the discharge of said trust, shall not nor shall any of them incur any liability or responsibility in consequence of permitting or suffering the party of the first part to retain or to be in possession of the railroad property, estate or premises hereby mortgaged or intended so to be, or any part thereof, or to use and enjoy the same nor for any destruction, deterioration, loss, injury or damage which may be done or occur to such railroad, estate or property, either by the said party of the first part or its agent- or servants or by any other person or persons, nor for the consequences of any breach on the part of the said party of the first part or its successors, or any of the covenants herein contained, nor for any act of the said party of the first part, its agents or servants, nor for any act, matter or thing except its or their own wilful or intentional breaches of trust herein expressed and contained. In case at any time it shall be necessary and proper for the trustees to make any investigation respecting any facts preparatory to taking or not taking any action or doing or not doing anything as such trustee, the certificate of the party of the first part under its corporate seal, attested by the signature of its president and the affidavit of one or more directors shall be conclusive evidence of such facts to protect the trustee in any action that it may take by reason of the supposed existence of such fact. But this indenture is made and delivered upon the express condition and provided that if the said party of the first part, its successors or assigns shall and do well and truly pay or cause to be paid to the person or persons, bodies politic or corporate, who shall become the holders of the bonds secured hereby to the several and respective amounts expressed therein and payable according to the
217 tenor thereof and of the coupons thereto attached on the days and times therein mentioned, being the principal and lawful interest thereon, in accordance with the provisions of the said bonds and of this indenture, without any fraud or delay, then and from thenceforth this indenture and the estate hereby granted and conveyed or agreed so to be, and all the said bonds and obligations shall become void and of no effect, anything hereinbefore contained to the contrary notwithstanding, and satisfaction shall be forthwith executed and certified by the said parties of the second part or their successors or the trustee or trustees for the time being under this indenture, upon the record of this indenture of mortgage as to immediately invest the party of the first part with the premises hereby granted in law and in fact without any entry or further act.

In witness whereof, the said Indianapolis, Decatur and Western Railway Company has caused this instrument to be signed by the president and attested by the secretary of the said corporation and its corporate seal thereto affixed, this 2nd day of January, 1888, under and by virtue of a resolution of the board of directors for that purpose made and obtained at and for the act and deed of the said Indianapolis, Decatur and Western Railway Company, and the said Farmers' Loan and Trust Company of New York in like

manner has caused the same to be signed by its president and its corporate seal to be thereto affixed this 2nd day of January, 1888, as and for the solemn act and deed of the said Farmers' Loan and Trust Company of New York and the said Noble C. Butler has hereunto set his hand and seal this 2nd day of January,
218 1888, as and for his free act and deed.

INDIANAPOLIS, DECATUR AND WESTERN RAILWAY CO.,
By H. B. HAMMOND, *President.*

[SEAL.]
Attest: THOMAS B. ATKINS, *Secretary.*

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

[SEAL.]
Attest: WM. H. DUFFY, *Sec'y.*

NOBLE C. BUTLER.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

Be it remembered that on the 1st day of March, A. D. 1888, before me, Charles Nettleton, a commissioner of the State of Illinois in and for the State of New York, residing in said city of New York, personally appeared Henry B. Hammond, president of the Indianapolis, Decatur and Western Railway Company, who is personally known to me to be the same persons described in and who executed the foregoing instrument of writing, and he, being duly sworn, doth depose and say that he was personally present at the execution of the foregoing instrument and saw the common seal of said company duly affixed thereto, and that the seal so affixed is the com-
219 mon seal of said company, and that the said instrument was signed, sealed, and delivered by him as and for the act and deed of said company for the uses and purposes therein mentioned, and that the name of this deponent subscribed to said instrument as president of said company in attestation of the due execution and delivery of the said instrument is in the deponent's own proper handwriting.

In witness whereof I have hereunto set my hand and affixed my official seal this first day of March, A. D. 1888.

CHARLES NETTLETON,
Commissioner for Illinois in New York,
115 *and* 117 *Broadway, N. Y. City.*

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

Personally appeared before me, Charles Nettleton, a commissioner of the State of Indiana in and for the State of New York, residing in said city of New York, this first day of March, A. D. 1888, Henry B. Hammond, president of the Indianapolis, Decatur and Western

Railway Company, and acknowledged that he executed the foregoing instrument as the free act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this first day of March, A. D. 1888.

CHARLES NETTLETON,

[SEAL.] *Commissioner for Indiana in New York,*
115 *and* 117 *Broadway, N. Y. City.*

220 STATE OF NEW YORK, }
City and County of New York, } ss:

Personally appeared before me, Charles Nettleton, a commissioner of the State of Indiana in and for the State of New York, residing in the city of New York, this first day of March, A. D. 1888, Rosewell G. Rolston, president of the Farmers' Loan and Trust Company, and acknowledges that he executed the foregoing instrument as the free act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this first day of March, A. D. 1888.

CHARLES NETTLETON,

[SEAL.] *Commissioner for Indiana in New York,*
115 *and* 117 *Broadway, N. Y. City.*

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that on the first day of March, A. D. 1888, before me, Charles Nettleton, a commissioner of the State of Illinois in and for the State of New York, residing in said city of New York, personally appeared Rosewell G. Rolston, president of the Farmers' Loan and Trust Company, who is personally known to me to be the person described in and who executed the foregoing instrument of writing, and he, being duly sworn, doth depose and say that he was personally present at the execution of the foregoing instrument and saw the common seal of said company duly affixed thereto, and that the seal so affixed is the common seal of said company, and that
221 said instrument was signed, sealed, and delivered by him as and for the act and deed of said company for the uses and purposes therein mentioned, and that the name of this deponent subscribed to this instrument as president of said company in attestation of the due execution and delivery of the said instrument *it* is in this deponent's own proper handwriting.

In witness whereof I have hereunto set my hand and affixed my official seal this first day of March, A. D. 1888.

CHARLES NETTLETON,

[SEAL.] *Commissioner for Illinois in New York,*
115 *and* 117 *Broadway, N. Y. City.*

STATE OF INDIANA, }
County of Marion, } ss:

On this 3rd day of March, A. D. 1888, before me, Christian H. Stein, a notary public within and for the county and State aforesaid,

personally appeared Noble C. Butler, trustee, etc., who is personally known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he had signed, sealed, and delivered the said instrument as his free act and deed for the uses and purposes therein expressed.

Witness my hand and notarial seal this third day of March, A. D. 1888.

CHRISTIAN H. STEIN,
Notary Public.

[SEAL.]

Filed and recorded March 8th, 1888.

HENRY E. RIVES, *Recorder.*

222 STATE OF ILLINOIS, } ss:
Edgar County, }

I, Jas. L. Vance, circuit clerk and *ex officio* —, do hereby certify that the above is a copy of mortgage filed in this office March 8th, 1888.

J. L. VANCE.

223 I offer in evidence a certified copy of a mortgage from the Chicago & Calumet Terminal Railway Company, dated the 1st day of May, 1893, running from the Chicago & Calumet Terminal Railway Company, party of the first part, to the Farmers' Loan & Trust Company of the City of New York, a corporation organized under the laws of the State of New York, party of the second part, recorded in the recorder's office of Cook county, Illinois, on May 22nd, 1893, in Book 4356 of Records, page 8, to secure an issue of ten million dollars of bonds.

Objected to by counsel for defendant, The Farmers' Loan & Trust Company.

Objection overruled by the court; to which ruling of the court counsel for defendants then and there duly excepted.

(Said last-mentioned document was thereupon read in evidence by counsel for complainant and is as follows, to wit:)

224 *Chicago and Calumet Terminal Railway Company First Mortgage.*

$10,000,000.

May 1st, 1893.

225 This indenture, made the first day of May, A. D. eighteen hundred and ninety-three (1893), between the Chicago and Calumet Terminal Railway Company, a corporation duly organized and existing under and by virtue of the laws of the States of Illinois and Indiana, hereinafter called the railway company, party of the first part, and the Farmers' Loan and Trust Company, of the City of New York, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and C. C. Matson, of Greencastle, Putnam county, Indiana, a *bona fide* resident of the

State of Indiana, hereinafter called the trustees, parties of the second part;

Whereas, the railway company is authorized to construct and operate a railroad with one or more main tracks, and all necessary and convenient branches, spurs, Y connections, turnouts, and side tracks, from a point on Lake Michigan, in the county of Lake in the State of Indiana, and running thence in a westerly and northerly direction through said county of Lake, and through the county of Cook in the State of Illinois, to a point on Lake Michigan north of the city of Evanston, in said county of Cook; and,

Whereas, in the exercise of its charter powers it is advisable for the railway company to borrow money and to secure the payment of the same by mortgaging its present property and the franchises pertaining thereto; and,

Whereas, the railway company has by due action of its board of directors and stockholders, at meetings duly convened according to law in the city of Chicago in said Cook county, on the fif-
226 teenth day of May, A. D. 1893, determined to make and issue its first-mortgage bonds to an amount not exceeding in the aggregate of the principal thereof the sum of ten millions of dollars ($10,000,000), payable at the office or agency of the railway company in the city of New York, on the first day of May, A. D. nineteen hundred and forty-three (1943), in gold coin of the United States of America, of or equal to the present standard of weight and fineness, bearing interest at the rate of five per centum per annum, payable semi-annually on the first day of May and the first day of November in each and every year, said bonds to be coupon bonds of the denomination of one thousand dollars ($1,000), to be numbered consecutively from one to ten thousand, each of said bonds to be duly executed under the seal of the railway company, signed by its president or vice-president, and attested by its secretary or assistant secretary, and the interest coupons to be authenticated by or with the engraved signature of its treasurer; and coupon bonds may be exchanged for registered bonds of the denomination of five thousand dollars ($5,000); and

Whereas, in order to secure the payment of the principal and interest of all said bonds equally and ratably, without priority or distinction, irrespective of the date of the issue of the same, the railway company has by due action of its board of directors and stockholders, as aforesaid, determined to execute and deliver this mortgage or deed of trust, and has further determined that each of said bonds shall be certified by the said trust company, one of the trustees,
227 which certificate shall be conclusive and the only proof that the same is secured by this indenture, and that said bonds shall be substantially as follows, that is to say:

(*Form of Coupon Bond.*)

UNITED STATES OF AMERICA, *States of Illinois and Indiana.*

No. —. $1,000.

Chicago and Calumet Terminal Railway Company First-mortgage Five Per Cent. Fifty-year Gold Bond.

The Chicago and Calumet Terminal Railway Company hereby promises to pay to the holder of this bond, one thousand dollars, in United States gold coin of the present standard of weight and fineness, on the first day of May, A. D. 1943, at its office or agency in the city of New York, with interest thereon from the first day of May, A. D. 1893, at the rate of five per centum per annum, payable semi-annually on the first days of May and November on the presentation and surrender of the annexed coupons as they severally become due.

All payments upon this bond, both of principal and interest, shall be made without deduction for any tax or taxes that said railway company may be required to pay.

This bond is one of a series of coupon bonds aggregating ten million dollars ($10,000,000), secured by mortgage or deed of trust duly executed and delivered by the said railway company
228 to the Farmers' Loan and Trust Company of New York, and C. C. Matson, of Greencastle, county of Putnam and State of Indiana, as trustees, bearing even date with this bond and covering the franchises and the real and personal property of the said railway company as therein described, to all the provisions of which mortgage or deed of trust this bond and each coupon hereto attached are subject. This bond shall pass by delivery, or by transfer upon the books of said railway company in the city of New York. Coupon bonds may be exchanged for registered bonds of the denomination of five thousand dollars ($5,000), of like tenor and same date equally secured by said mortgage or deed of trust. This bond shall not be valid until authenticated by the certificate indorsed hereon duly signed by said The Framers' Loan and Trust Company, trustee.

In witness whereof, the said Chicago and Calumet Terminal Railway Company has caused this bond to be signed in its corporate name by its vice-president and its corporate seal to be hereunto affixed and attested by its assistant secretary this first day of May, A. D. 1893.

CHICAGO AND CALUMET TERMINAL RAILWAY COMPANY,

By —— ——, *Vice-President.*

[Corporate Seal.]

Attest: —— ——, *Assistant Secretary.*

229 (*Form of Coupon.*)

No. —. $25.

The Chicago and Calumet Terminal Railway Company will pay to bearer twenty five dollars, U. S. gold coin, at the company's office or agency in New York city, on the first day of ——, being six months' interest on its first-mortgage bond No. —.

—— ——, *Treasurer.*

(Indorsed.)

Trustee's Certificate.

It is hereby certified that this bond is one of the series of bonds described in the mortgage or deed of trust therein mentioned, bearing date the first day of May, A. D. 1893.

THE FARMERS' LOAN AND TRUST COMPANY, *Trustee,*

By —— ——.

Now, therefore, this indenture witnesseth, as follows:

The Chicago and Calumet Terminal Railway Company, in consideration of the premises and of one dollar to it in hand paid by the trustees at or before the execution and delivery of this indenture, the receipt whereof is hereby acknowledged, and in order to secure the due and punctual

230 payment of the principal and interest of all said bonds to be issued as hereinbefore provided, equally and ratably without priority or distinction, irrespective of the date of the issue of the same, to an amount not exceeding in the aggregate of the principal thereof, ten millions of dollars ($10,000,000) has granted, bargained and sold, transferred, assigned, set over, released, conveyed and confirmed, and by this indenture does grant, bargain and sell, transfer, assign, set over, release, convey and confirm, unto the Farmers' Loan and Trust Company and C. C. Matson, as trustees, and to their and each of their successors or successor in the trust, and their and each of their assigns, forever, all and singular the following-described property, that is to say:

All the railroad of the railway company, as now constructed, commencing at a point on Lake Michigan, in the county of Lake and State of Indiana, running thence in a westerly direction through said Lake county to the boundary line between the States of Indiana and Illinois, and thence in a westerly and northerly direction through the county of Cook in the State of Illinois, to a point

of connection with the main line of the Chicago, Santa Fe and California Railroad Company, in said county of Cook, with the branches, spurs, Y connections, turnouts and side tracks of the said railroad as now constructed, including the right, power, franchise and privilege of completing, finishing and operating said railroad so constructed, together with all the lands, tenements, hereditaments, easements and appurtenances belonging or in anywise appertaining thereto, and all
231 the ways and rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, elevators, warehouses, power plants, machine and repair shops and their equipment, water tanks, turn-tables, superstructures, buildings and fixtures belonging to or connected with said lines of railway as now constructed or the business thereof; also all locomotives, tenders, cars and other rolling stock, equipment, rails, ties, fastenings, switches, side tracks, machinery, tools and implements now owned by the railway company; also all corporate rights, privileges, immunities, franchises and ordinances pertaining to said line as now constructed; also all other railway lines that may be constructed or acquired by the bonds or the proceeds thereof issued under this mortgage.

To have and to hold the said lands, premises, stations, facilities, railways, property, appurtenances, estates, rights, titles, interests, privileges, immunities and franchises, now belonging or in anywise appertaining thereto, unto the said parties of the second part, their and each of their successors or successor in the trust, and their and each of their assigns, forever.

In trust, nevertheless, for the equal, *pro rata* benefit and security of all and every the persons or corporations who may be or become holders of any of the said bonds hereby secured, without any preference or priority of one bond over another or others by reason of priority in the time of issue or negotiation thereof, or otherwise, and for the uses and purposes hereinafter declared and expressed.

232 It is hereby expressly covenanted and agreed by and between the parties hereto, the railway company covenanting as well for itself as for its successor or successors and assigns, and the trustees covenanting as well for themselves as for their and each of their successors or succes-

sor in the trust and their and each of their assigns that the said above-described lands, premises, railway, property, rights, franchises and appurtenances are to be held by the trustees upon and for the trusts, uses and purposes following, that is to say:

Article one.

Issue of bonds not to exceed $10,000,000.

The bonds to be issued under and secured by this indenture shall not exceed in the aggregate of the principal thereof the sum of ten millions of dollars ($10,000,000), and all the said bonds shall forthwith be executed by the railway company and delivered to said trust company, one of said trustees. It shall be the duty of the said trust company as trustee, from time to time, to certify the said bonds and redeliver the same to the railway company as hereinafter provided.

Article two.

Bonds to be certified immediately to pay for properties acquired.

(*a.*) Six thousand (6,000) of said bonds shall be immediately certified by the said trust company and redelivered to the railway company to be issued and used by it in payment for lands, premises and railway property heretofore acquired by the railway company. Ten interim certificates of $600,000 each shall be immediately issued
233 and certified to be replaced by the aforesaid 6,000 bonds when the same are engraved and ready for delivery.

Remaining bonds certified and used whenever required by resolutions of railway company.

(*b.*) All the remaining bonds, to wit: four thousand (4,000) of said bonds, shall be certified by the said trust company, trustee, and redelivered to the railway company at such times and in such amounts as shall be required by resolution of the board of directors of the railway company, and as shall be necessary to realize a sum of money sufficient to pay such sums as shall be shown by a certificate of the chief engineer of the railway company, accompanying said resolutions, to have been expended in addition to, extensions or improvements and betterments upon the mortgaged premises, and in all cases the resolutions of the board of directors of the railway company shall be conclusive authority to the said trust company, trustee, for the certification and redelivery of the said bonds.

Article three.

Purposes for which bonds may be used.

The railway company hereby covenants and agrees to use and expend the bonds certified and

redelivered to it, and the proceeds thereof, in payment for lands, premises and railway property heretofore acquired by the railway company, and in the improvement, maintenance or betterment of the lands, premises, railways and other property conveyed by this indenture, or for the com-
234 pletion, erection or construction of buildings, warehouses, elevators, depots, stations, engine-houses, power plants, machine and repair shops and their equipment, tracks, bridges, viaducts, culverts and other permanent improvements and facilities connected therewith, or in the acquisition or purchase of rolling stock and equipment, maintenance, replacement and operation of its railway lines, or in the purchase or acquisition of other lands, premises, railway lines, buildings or properties which may be used in connection with and as a part of the railway lines, premises and property hereby conveyed, or for such other uses, objects or purposes as may be necessary to preserve and protect the property, corporate rights, privileges and franchises of the railway company, and any and all additional lands, premises, railway lines, buildings or property which may hereafter be acquired by the use of the said bonds or the proceeds thereof, shall be within and be subject to the lien created by this indenture.

Article four.

Railway company to pay bonds and coupons and taxes, and waiver of stay and appraisement laws.

The railway company hereby covenants and agrees to pay to the lawful holder of each and every the bonds secured by this indenture, the principal thereof and the interest thereon, in accordance with the tenor of the said bonds and of the coupons annexed thereto, when and as the same shall respectively become due and
235 payable, free from any and all taxes that may be required by any present or future laws of the United States of America or of the States of Illinois or Indiana, to be deducted from either the principal or interest of said bonds. The railway company further covenants and agrees to pay all and every the lawful taxes that may at any time be assessed by any lawful authority upon the premises hereby conveyed and every part thereof, when and as necessary to protect the same against the lien of such taxes. The railway company further covenants and agrees to and does hereby waive the benefit of any extension, stay, appraisement or redemption laws, now existing

or that may hereafter exist, of the United States of America, the States of Illinois or Indiana, and of any other State into which its railway lines may extend.

Article five.

Railway company to enjoy mortgaged property until default.

Unless default be made by the railway company in payment of the principal or interest of the bonds hereby secured, or any of them, the railway company shall enjoy all the property, rights, privileges and franchises conveyed hereby, as if this indenture had not been made.

236

Article six.

Right of trustees to enter and operate road in case of default.

In case default shall be made in the payment of any of the interest on any of the bonds issued or to be issued under and secured by this indenture, and if any such default shall continue for the period of six months, then upon the demand of the holders of the defaulted coupons the trustees may, and upon requisition and indemnity, as hereinafter prescribed in article eight of this indenture, the trustees shall, upon the demand of the holders of the defaulted coupons, personally or by their attorneys or agents, enter into and upon all and singular the said railroads, with the appurtenances, and all other the property and franchises belonging thereto, and hereby conveyed, or meant or intended so to be, and each and every part thereof, and wholly exclude the railway company and its agents, therefrom; and have, hold, and use the same as the railway company could or might do if this indenture had not been made, operating by their managers, superintendents, receivers, or servants, or other attorneys or agents, the said railroads, and conducting the business thereof, and exercising the franchises pertaining thereto; and making from time to time all repairs and replacements and such useful alterations, additions and improvements thereon and thereto as may seem to be necessary or judicious; and
237 collect and receive all tolls, freights, incomes, rents, issues and profits of the same, and of every part thereof; and after deducting the expenses of operating the said railroads and of conducting the business thereof, and of all the said repairs, replacements, alterations, additions and improvements, and all payments which may be made for taxes, assessments, charges or liens prior to the lien of this indenture, upon the said

premises or any part thereof, as well as a just compensation for their own services, shall apply the money arising, as aforesaid, to the payment of the interest on the bonds, hereby secured, in the order in which such interest shall have become due, ratably, to the persons entitled to such interest; and if, after paying all interest which shall have become due, a surplus shall remain, such surplus, and the property herein mentioned and included, shall be forthwith paid and returned to the railway company.

Article seven.

Right of trustees to enter and sell in case of default.

In case default in interest shall be made as aforesaid, and shall continue as aforesaid after demand for payment of such interest by the holders of the defaulted coupons, or in case, default be made in the payment of any of the principal of said bonds when the same shall become due, the trustees may, and upon requisition and indemnity,
238 as in article eight of this indenture prescribed, the trustees shall, after entry, as aforesaid, or without entry, personally, or by their attorneys or agents, sell and dispose of all and singular the said railroads, and all the estate, rights, title and interest of the railway company in and to the same, with the appurtenances, and all other the property, rights, privileges, immunities and franchises thereto, belonging and hereby conveyed, or intended so to be, as an entirety, to the highest and best bidder or bidders, at public auction, in the city of Chicago, State of Illinois, and at such time as they shall appoint, having first given notice of the time and place of such sale, by advertisement, published not less than three times in each week, for six successive weeks, in one or more newspapers printed and published in the cities of Boston, New York and Chicago, of general circulation in the business communities of said cities, or may adjourn the said sale from time to time in their discretion, and, if so adjourned, make the said sale at the time and place to which the same may be so adjourned; and make and deliver to the purchaser or purchasers of the said railroads, with the appurtenances, and all other the said property, rights, privileges, immunities and franchises thereto belonging, good and sufficient deed or deeds thereof, in fee-simple;
239 which sale, made as aforesaid, shall be a perpetual bar, both in law and in equity,

against the railway company, and all persons claiming or to claim the said described property, or any part thereof, or any interest therein, by from, through, or under it; and after deducting from the proceeds of such sale just allowance for all expenses thereof, including attorneys' and counsel fees, and all other expenses, advances, or liabilities, which may have been made or incurred by them in operating or maintaining the said railroads and property, or in managing the business thereof, while in possession, and all payments, which may have been made by them for taxes or assessments on said lines of railroad, or the appurtenances or other property thereto belonging, or any part thereof, as well as reasonable compensation for their own services, it shall be lawful for the trustees, and it shall be their duty to apply the residue of the money arising from the said sale to the payment of the principal of the bonds, which shall have been issued under this indenture and shall then be outstanding and unpaid, whether the same shall have previously become due or not, and to the payment of the interest which shall have at that time accrued on the said principal and be unpaid, without discrimination or preference of principal over interest or of interest over principal, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and if, after satisfaction thereof, a surplus of the said proceeds shall remain to pay over the same to the railway company, or to such other party or parties as may be entitled thereto.

Article eight.

Duty of trustees upon requisition and indemnity.

In case default shall be made in the payment of any installment of interest on any of the said bonds, and if such interest shall remain unpaid and in arrears for the period of six months after demand for payment of such interest by the holders of the defaulted coupons, or in case default shall be made in the payment of the principal of said bonds, then, and in either or any or every such case, it shall be the duty of the trustees, upon a requisition in writing signed by the holders of not less than one-quarter in amount of the said bonds then outstanding, and upon adequate security and indemnity against all costs, expenses and liabilities to be by the trustees incurred, to proceed to enforce the rights of the bondholders under this

indenture, either by the exercise of the powers granted by articles six and seven of this indenture, or of any of said powers, or by a suit or suits in equity or at law in aid of the execution of such powers, or otherwise, as the trustees, being advised by counsel, shall deem most effectual to
241 enforce such rights, subject to the power hereby declared of a majority in interest of the holders of said bonds that shall be then outstanding, in writing, or by vote at a meeting duly held, to instruct the trustees to waive any such default, or, upon adequate security and indemnity as aforesaid, to enforce the rights of the bondholders by reason thereof;

Provided, that no action of the trustees or of the bondholders in waiving a default, shall extend to, or be taken to apply to, or affect any subsequent default, or impair the rights of the trustees or of the bondholders resulting from such subsequent default, it being understood, and it is hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, additional to all other remedies allowed by law, and that the same shall not be deemed, in any manner whatsoever, to deprive the trustees or the beneficiaries under this trust, of any legal or equitable remedy by judicial proceedings, consistent with the provisions of this indenture, according to the true intent and meaning thereof;

Provided, always, and it is hereby expressly declared and agreed that no holder or holders of a bond or of any bonds, secured hereby, shall have the right to institute any suit, action or proceeding, in equity or at law, for the foreclosure
242 of this indenture, or for the execution of the trusts thereof, or for the appointment of a receiver, or any other action, suit, or remedy hereunder, or under or upon any bonds or coupon for interest hereby secured, without first giving notice in writing to the trustees of default having occurred and continued and demand by the holders of the defaulted coupons having been made, as in this article aforesaid, and requesting the trustees and affording them a reasonable opportunity to institute such action, suit or proceeding in their own name, or to proceed to exercise the powers hereinbefore granted, and also offering to them adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request, demand and offer of indemnity are hereby declared

to be conditions precedent to any suit or action by any such bondholder or bondholders for the foreclosure or for the execution of the trusts of this indenture, or for the appointment of a receiver and to any other action, suit or remedy hereunder, or under or upon any bond or coupon for interest hereby secured, brought by any such bondholder or bondholders. And it is hereby provided, declared and agreed that, in case any sale shall be made of the said railroads, chattels real, interests, estates, appurtenances, fixtures, equipment, property, lands, rights, privileges, immunities
243 or franchises, either by the exercise of the powers granted in article seven of this indenture, or pursuant to or under a decree or judgment of a court of competent jurisdiction, the purchaser or purchasers at said sale or sales shall be entitled in making settlement for, and payment of, the purchase-money, to deliver to the trustees, or, in case of a judicial sale, to the person or persons legally appointed and qualified to receive the payment of such purchase-money, and to turn in and use any of the bonds or coupons secured by this indenture, held by the said purchaser or purchasers, in or towards the payment of said purchase-money, reckoning and computing said bonds or coupons at a sum equal to, and not exceeding, that which would be payable out of the net proceeds of said sale, if made for money, to the purchaser or purchasers, as the holder or holders of said bonds or coupons for his or their just share and proportion in that character of such net proceeds, upon a due accounting, and apportionment and distribution of said net proceeds.

Article nine.

Trustees' receipt to purchasers.

It is hereby declared that the receipt or receipts of the trustees shall be a sufficient discharge to the purchaser or purchasers at any sale or sales made by the said trustees under or in pursuance of either of said articles seven or eight for
244 his or their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not, after payment thereof, and having such receipt, be liable to see to its being applied for or upon the purposes and trusts of this indenture; or in any manner howsoever be answerable for any loss, misapplication, or non-application of such purchase-money, or any part thereof, or be obliged to inquire into

the necessity, expediency, or authority of or for any such sale.

Article ten.

Trustees may purchase for bondholders.

At any sale or sales of the aforesaid lines of railroad, appurtenances, lands, premises, real estate, chattels real, property, rights, interests, and franchises, whether made by virtue of any power herein granted or by judicial authority, the trustees, upon the request of the holders of three-fourths in amount of the bonds outstanding, may bid for and purchase, or cause to be bid for and purchased, the same, for and in behalf of all the holders of the bonds hereby secured and then outstanding, in the proportion of the respective interests of such bondholders, at a price not exceeding the whole amount of such bonds outstanding, with the interest accrued thereon, and the expenses of such sale or sales.

245 Article eleven.

Trustees may declare principal due.

In case default shall be made in the payment of any installment of interest on any of the aforesaid bonds hereby secured, when such interest shall become due and payable according to the terms of said bonds, or of any coupon thereto annexed, and if such default shall continue for the period of six months, after demand for payment of such interest by the holders of the defaulted coupons, then, and in such case, the principal of all the bonds secured by this indenture shall, at the election of the trustees, become immediately due and payable, anything in the said bonds or herein contained to the contrary notwithstanding. But a majority in interest of the holders of all said bonds that shall be then outstanding may, in writing, or by vote at a meeting duly held as herein provided, instruct the trustees in such case, after such demand, to declare the said principal to be due, or to waive the right so to declare, or to waive any and every default of the railway company on such terms and conditions as such majority shall deem proper; or may annul or reverse the election of the trustees: Provided, that no waiver of or by the trustees or bondholders shall extend to, or be taken to affect any subsequent default, or impair the rights resulting from such subsequent default.

246 Article twelve.

Trustees' power to release.

The trustees shall at all times during the continuance of the trust hereby created, when required so to do, as hereinafter in this article provided, release and convey to any party or parties who may be designated in writing by the railway company to receive such release or conveyance, or release from the lien or operation of this indenture in such other manner as the trustees may deem proper, any portion of the premises and property hereinbefore granted, which may be appurtenant to the said lines of railway, but which shall be unnecessary for use in connection therewith, or which shall have been acquired or held for stations, depots, shops or other buildings, or for a supply of fuel, gravel or other material, and also shall release or convey as aforesaid any lands, which may become disused by reason of a change of the location of any station-houses, depots, shops, or other buildings connected with the said lines of railway, or which the railway company may deem it expedient to disuse or abandon, and shall also, when required as aforesaid, consent to changes in the location of the track or of station-houses, depots, shops or other buildings, and to exchanges of property and readjustment of boundaries,
247 and shall execute and deliver the instruments necessary or proper to carry the same into effect; provided, however, that the releases or conveyances or other consents or instruments, provided to be made by the trustees under the authority of this article, shall be executed or given only upon the written request of the president of the railway company, showing the reasons therefor, accompanied by an affidavit of the chief engineer or other proper officer of the railway company, stating the facts upon which such request is made, and accompanied also by a certified copy of the resolution of its board of directors, to that effect, which said request, so evidenced, shall in all cases be conclusive authority to the trustees for the execution and delivery of such releases, conveyances, consents, or other instruments.

The railway company shall be at full liberty from time to time to dispose of, according to its discretion, such portion of the machinery, tools and implements which shall be at any time acquired or held for the use of said lines of railway, and of the other property hereby conveyed, as shall have become unfit or unnecessary for such

use. The railway company shall be at full liberty to use any and all moneys or securities, which it may receive for or upon any sale, lease or other disposition of any property, made under the
248 provisions of this article, for the purchase or acquisition of other property, or for the improvement of the property hereby conveyed, including all the purposes specified in article three of this indenture.

Article thirteen.

Definition of trustees and provisions for responsibility, resignation, removal and appointment.

It is mutually understood and agreed by and between the parties hereto, that the word "trustees" when and as used in this indenture, except where some other meaning is plain, is intended to refer to and describe, and shall be construed to mean, the corporation or corporations, or the person or persons, which or who, for the time being, hall be charged with the execution of the trusts hereof, whether the same be the said parties of the second part or any successor or successors in said trust.

It is further mutually agreed by and between the said parties hereto, as a condition on which the parties of the second part have assented, and do assent to this indenture, that the trustees shall not, in any manner, be responsible or liable for any act, default or misconduct of any agent or agents by them employed; nor shall they be answerable, under any circumstances, except for their own willful default or misconduct; that the trustees shall be entitled to just compensation for all services which they may hereafter render in said trust, and that the trustees or either
249 of them, may resign and be discharged of the trusts hereby created, by notice in writing to the railway company, three months before such resignation shall take effect, or such shorter time as the railway company shall accept as adequate notice.

It is further declared and agreed that the trustees, or either of them, may be removed by a majority in interest of the holders of all said bonds hereby secured and then outstanding, by instrument or instruments in writing under their hands and seals, or by vote at a meeting duly called and held as herein provided.

In case of the resignation, removal or death of either of the trustees, a successor or successors shall be appointed by the president of the railway company, by an instrument in writing, and in all cases

where a change is made in the trustee or trustees, the new trustee or trustees, successor or successors, shall thereupon become and be vested with all the powers, authorities, estates, rights, titles, and interests granted or conveyed to, or conferred upon the trustees by this indenture, and all the rights, powers, authorities and interests, requisite to enable such new trustee or trustees, successor or successors, to execute, perform and fulfill the powers, duties and purposes of this trust, by force of this indenture, without any further assurance or conveyance, so far as such effect may be lawful; nevertheless, the trustee resigning or being removed shall immediately execute all such conveyances, or assurances, and other instruments, as may be fit and expedient for the purpose of assuring the legal estate in the premises to the new trustee or successor so appointed.

In case of a vacancy being filled by appointment by the president of the railway company under the foregoing provision in that behalf, it shall be competent for any court of equitable powers, having jurisdiction in the premises, upon the application of bondholders holding one fourth of the bonds then outstanding, upon due notice to the railway company, and for cause to be shown, to annul such appointment and appoint a trustee or trustees in place of the trustee or trustees so appointed, to hold the trust for the like term as such trustee or trustees would hold the same under the president's appointment.

And it is further declared and agreed that whenever, and as often as any contingency, shall arise, in which a meeting of the bondholders shall be necessary or expedient, it shall be the duty of the trustees, or of the president of the railway company, on the written request of the holders of not less, in the aggregate, than one fourth in amount of said bonds then outstanding, and stating therein the purpose thereof, to call a meeting of the holders of all the then outstanding bonds secured hereby, to be held in the city of New York, by advertisement to be published daily for at least six successive weeks in two newspapers printed and published in said city, and of good circulation in the business community thereof; and in default of such meeting being called by the trustees or by the president of the railway company, within thirty days after request as aforesaid, it shall be competent for the holders

of not less, in the aggregate, than one-fourth in amount of said bonds, then outstanding, to call such meeting in the manner aforesaid. And at any such meeting so called, the bondholders shall be competent to exercise in person or by proxy, all the powers and authorities conferred upon them by this indenture: Provided, that the holders of a majority in interest of the outstanding bonds, in person or by proxy, shall be required to constitute a quorum at any such meeting; and provided further, that any vote of such meeting affecting, or intended to affect, any person or corporation, including the parties hereto, or their successors, may, by such person or corporation to be affected, be required to be authenticated under the hands and seals of the persons so voting.

Article fourteen.

Covenant for further assurance.

The railway company hereby covenants and agrees to and with the trustees that it, the railway company, shall and will, from time to time,
252 and at all times hereafter, upon the reasonable request of the trustees, make, execute, acknowledge and deliver all such further deeds, conveyances and assurances in the law, for the better assuring to the trustees, upon the trusts, and for the purposes herein expressed or intended, the said railways and the estates, rights, titles and interests of the railway company therein and thereto, with the equipment and appurtenances, and all other rights, interests, lands, premises, real estate, chattels real, property and effects, hereby mortgaged or conveyed in trust, and all property, which may be purchased or acquired by the use of the bonds, hereby secured, or of the proceeds thereof.

Article fifteen.

If the railway company shall well and truly pay the sums of money herein required to be by it paid, and all interest thereon, at the times and in the manner herein specified, and shall well and truly keep, perform and observe all the agreements and things herein agreed and required to be kept, performed, and observed by it, according to the true intent and meaning of this indenture, then and in that case, the estate, right, title and interest of the trustees, and of their successors in the trust hereby created, in and to the property, rights, franchises, lands and premises, hereby
253 granted and conveyed, shall cease and determine, and this indenture shall become

void; otherwise the same shall be and remain in full force and virtue. And whenever the said bonds hereby secured shall be fully paid, principal and interest, this indenture shall be discharged by the trustees or their successors, by appropriate instrument or instruments under seal, duly executed and acknowledged.

Discharge of mortgage.

Article sixteen.

Marginal notes shall not affect text.

It is expressly declared and agreed by and between the parties hereto, that the marginal notes to and upon this indenture are for convenience only, and shall not affect the interpretation of the text

In witness whereof, the party of the first part has caused this indenture to be signed by its president or vice-president, and its corporate seal to be hereto affixed and attested by its secretary or assistant secretary; and the said The Farmers' Loan and Trust Company to evidence its acceptance of the trusts by this indenture created, has caused this indenture to be signed by its president or vice-president, and its corporate seal to be hereto affixed and attested by its secretary
254 or assistant secretary; and the said C. C. Matson to evidence his acceptance of the trusts by this indenture created, has hereunto set his hand and seal, in quadruplicate originals the day and year first hereinbefore written.

CHICAGO AND CALUMET TERMINAL RAILWAY COMPANY,
By DAVID S. WEGG, *President.*

{ Chicago & Calumet Terminal Railway Company Corporate Seal, Chicago, Ills. }

Attest: HENRY S. BOUTELL, *Secretary.*

THE FARMERS' LOAN AND TRUST COMPANY,
By W. D. SEARLS,
Vice-President.

[Seal Farmers' Loan and Trust Company, N. York.]

Attest: E. S. MARSTON, *Secretary.*

C. C. MATSON. [SEAL.]

Sealed and delivered in the presence of—
HENRY STANTON.

(The word "triplicate" stricken out in line one, page twenty-two, and the word "quadruplicate" inserted in place thereof, before execution.)
ROBERT L. STANTON.

255 STATE OF ILLINOIS, } ss:
Cook County, }

I, Kemper K. Knapp, a notary public in and for Cook county, in the State of Illinois, do hereby certify that David S. Wegg and Henry S. Boutell, personally known to me to be the president and secretary, respectively, of the Chicago and Calumet Terminal Railway Company, appeared before me this day in person and acknowledged that they executed the foregoing instrument for and on behalf of said Chicago and Calumet Terminal Railway Company, as the free and voluntary act of said railway company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18th day of May, A. D. 1893.

KEMPER K. KNAPP,
Notary Public.

[Kemper K. Knapp, Notarial Seal, Cook Co., Ills.]

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Robert L. Stanton, a notary public in and for the city and county of New York, in the State of New York, do hereby certify that Whittlesey D. Searls and Edwin S. Marston, personally known to me to be the vice-president and secretary, respectively, of
256 the Farmers' Loan and Trust Company, appeared before me this day in person and acknowledged that they executed the foregoing instrument for and on behalf of said trust company, as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of May, A. D. 1893.

ROBERT L. STANTON.

[Robert L. Stanton, Notary Public in the City & County of New York.]

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Robert L. Stanton, a notary public in and for the city and county of New York, in the State of New York, do hereby certify that on the 20th day of May, A. D. 1893, before me personally appeared C. C. Matson, known to me to be the same person whose name is subscribed to the foregoing mortgage as one of the parties of the second part thereto, and acknowledged that he executed the same as his free and voluntary act as such trustee for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and official seal this 20th day of May, A. D. 1893.

ROBERT L. STANTON,
Notary Public.

[Robert L. Stanton, Notary Public in the City & County of New York.]

257 *Resolution of the Stockholders of the Chicago and Calumet Terminal Railway Company Authorizing the Issue of Bonds and the Making of a Mortgage to Secure the Same.*

At the adjourned meeting of the stockholders of the Chicago and Calumet Terminal Railway Company, held at the office of the said company, in the city of Chicago, county of Cook, and State of Illinois, on the fifteenth day of May, A. D. 1893, at which all the stockholders, representing the entire capital stock of said company, were present in person or by proxy, the following resolution was unanimously adopted:

Whereas the board of directors of this company, on the fifteenth day of May, A. D. 1893, unanimously adopted the following resolution, to wit: "Resolved, That this company execute a mortgage or deed of trust to the Farmers' Loan and Trust Company of New York and C. C. Matson, of Greencastle, Putnam county, Indiana, of the railway property, corporate rights, and franchises in said mortgage particularly described, as appears from the form of mortgage or deed of trust submitted to this meeting, to secure an issue by this company of its first-mortgage fifty-year gold bonds, bearing interest at the rate of five per centum per annum on the amount of their par value, of not exceeding ten million dollars ($10,000,000), dated the first day of May, A. D. 1893; that the president or vice-president and secretary or assistant secretary of this company be, and they hereby are, respectively authorized and directed to
258 execute, on behalf of this company and under its corporate seal, a mortgage or deed of trust in the said form as submitted to this meeting, which is hereby approved, and hereafter, when executed, to be spread upon the records of this company; and also to cause to be engraved and to execute, under its corporate seal, the said bonds, bearing coupons for interest, as aforesaid, executed with the engraved signature of the treasurer of this company, in the form set forth in the mortgage or deed of trust submitted to this meeting, as aforesaid; which said bond shall be issued by this company in accordance with the provisions of said mortgage or deed of trust;"

And whereas the form of mortgage or deed of trust and the form of bond therein referred to have been submitted to and are now before this meeting: therefore,

Resolved, That the aforesaid resolution of the board of directors of this company and the said form of mortgage or deed of trust and the bonds therein referred to and the execution and delivery thereof as authorized and directed by the said resolution be, and the same hereby are, in all respects authorized, directed, adopted, approved, ratified, and confirmed.

I, Henry S. Boutell, secretary of the Chicago and Calumet Terminal Railway Company, do hereby certify that the foregoing resolution is a true copy of a resolution unanimously adopted by the stockholders of the Chicago and Calumet Terminal Railway Company at the adjourned annual meeting held at the office of said

company in the city of Chicago, county of Cook, and State of
259 Illinois, on the fifteenth day of May, A. D. 1893, at which all the stockholders, representing the entire capital stock of said company, were present in person or by proxy.

In witness whereof I have hereunto set my name and affixed the seal of the said Chicago and Calumet Terminal Railway Company this seventeenth day of May, A. D. 1893.

{ Chicago & Calumet Terminal Railway Company
{ Corporate Seal, Chicago, Ills.

HENRY S. BOUTELL, *Secretary.*

260 UNITED STATES OF AMERICA, }
State of Illinois, } *ss.:*

OFFICE OF SECRETARY.

I, William H. Hinrichsen, secretary of state of Illinois, do hereby certify that the foregoing mortgage of the Chicago and Calumet Terminal Railway Company *were* filed for record in the office of the secretary of state of the State of Illinois on the 22d day of May, A. D. 1893, at 9 o'clock a. m., and duly recorded in Book No. 12 of Railroad Records, at page 290.

In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this 22d day of May, A. D. 1893.

[SEAL.] W. H. HINRICHSEN,
Secretary of State.

1,872,671.

STATE OF ILLINOIS, }
Cook County, } *ss.:*

Filed for record May 22, 1893, at 10 o'clock a. m., and recorded in Book 4356 of Records, page 8.

SAM'L B. CHASE, *Recorder.*

Received for record the 22d day of May, A. D. 1893, at 10.30 o'clock a. m., and recorded in Record 31, pages 1, &c.

JOHN F. KROST,
Recorder, Lake County, Indiana.

261 Mr. KNIGHT: We offer in evidence also a certified copy——
Mr. HERRICK: Each of these is objected to.

Mr. KNIGHT: Yes—of a mortgage made by the Chicago & Northern Pacific Railroad Company, a corporation organized under the laws of the State of Illinois, party of the first part, and the Farmers' Loan & Trust Company of the City of New York, a corporation organized under the laws of New York, party of the second part, dated April 1st, 1890, and filed for record in the recorder's office of Cook county, Illinois, on the 29th day of May, 1890, in Book 2971 of Records, page 463, to secure an indebtedness of $650,000, due in 1938.

(Said last-mentioned document was thereupon read in evidence by counsel for complainant and is as follows, to wit:)

262 Chicago and Northern Pacific Railroad Company
to
The Farmers' Loan and Trust Company.

First Mortgage or Deed of Trust.

Dated April first, A. D. 1890.

263 This indenture, made this first day of April, A. D. one thousand eight hundred and ninety, by and between the Chicago and Northern Pacific Railroad Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Illinois, party of the first part, hereinafter called the railroad company, and the Farmers' Loan and Trust Company, in the city of New York, a corporation duly created, organized and existing under and by virtue of the laws of the State of New York, hereinafter called the trustee,

Whereas, the railroad company, in the due exercise of the powers conferred upon it by law, has acquired by deed from John P. Neal and Marguerite L. Neal, his wife, and now owns and possesses certain lands and premises, situated at the corner of Harrison street and Fifth avenue, in the city of Chicago, in the State of Illinois, and generally described as block eighty-eight (88) and the north half of block eighty-seven (87) in the School Section addition to the said city of Chicago, being a subdivision of section sixteen (16), township thirty-nine (39) north, range fourteen (14) east of the third (3rd) principal meridian; with the stations and other buildings, railway tracks, terminal facilities and improvements erected thereon, which said lands, premises, stations, facilities and improvements are subject, however, to a purchase-money mortgage to the city of Chicago, dated the twenty-first day of March, A. D. 1888, to secure an indebtedness of six hundred and fifty thousand dollars ($650,000), bearing interest at the rate of five (5) per centum per annum, payable semi-annually on the first day of May and the first day of November in each year until paid, and maturing on the first day of May, A. D. 1938; and

264 Whereas, the railroad company has also acquired and now owns, holds and possesses, maintains and operates all of the railways and all the property, real and personal, of every kind and description, formerly belonging to the following railway corporations created, organized and existing under and by virtue of the laws of the State of Illinois, namely: the Chicago and Great Western Railroad Company, the Bridgeport and South Chicago Railroad Company and the Chicago, Harlem and Batavia Railway Company; and has also acquired, and is now vested with all the rights, franchises, ordinances and privileges of every kind and description formerly exercised by or belonging to the said railway corporations, and each of them; and

Whereas, the property, acquired as aforesaid from the Chicago and Great Western Railroad Company, is subject to a certain mortgage or deed of trust, bearing date the first day of May, A. D. 1886, exe-

cuted by the said railroad company to John A. Stewart and Edwin H. Abbot, trustees, to secure an issue of first-mortgage bonds by the said Chicago and Great Western Railroad Company to the amount at their par value of four millions of dollars, ($4,000,000), and also an issue of second-mortgage bonds to the amount at their par value of four millions of dollars, ($4,000,000), the bonds of each said issue bearing interest at the rate of five per centum per annum; and

Whereas, all of said bonds were duly issued and negotiated in accordance with the terms of said mortgage or deed of trust, and the railroad company, under and in accordance with the contracts, made by it for the acquisition of the property of the said Chicago and Great Western Railroad Company, has acquired all of said second-mortgage bonds and all of said first-mortgage bonds, except
265 first-mortgage bonds at their par value amounting to the sum of three hundred and ninety-nine thousand dollars ($399,000), which are now outstanding and not owned or controlled by the railroad company; and has caused all the said bonds, acquired by it as aforesaid, to be duly cancelled and delivered to said John A. Stewart and Edwin H. Abbot, trustees as aforesaid; and

Whereas, the railroad company proposes to extend, complete and develop the railway lines, terminal facilities and properties now owned and possessed by it, acquired as aforesaid, and hereinafter more particularly described, and to exercise the franchises and privileges pertaining thereto; and

Whereas, the railroad company, by indenture bearing even date herewith, proposes to make a lease of all its property and corporate rights and franchises to the Wisconsin Central Company and the Wisconsin Central Railroad Company, corporations organized and existing under the laws of the States of Wisconsin and Minnesota, upon certain terms, and reserving certain rentals as in said indenture particularly stated; and

Whereas, the railroad company from time to time hereafter may make other leases of, or grant running rights over, its said properties to other railway corporations, seeking entrance into the city of Chicago, upon terms not inconsistent with the provisions of the aforesaid lease to the said Wisconsin Central and Wisconsin Central Railroad Companies; and

Whereas, the railroad company desires to provide for the payment and discharge of all the obligations incurred by it in the purchase of the said several above-described lands, premises, stations,
266 buildings, terminal facilities, railways and properties acquired by it as aforesaid, and to provide for the finishing and completing of the stations, depots and other improvements now in process of erection upon the said above-described lands and premises, and now projected upon, or in connection with the said railway lines and terminal facilities aforesaid; and to provide funds for the exercise of the franchises and privileges, acquired by it from the said several railway corporations, as well as for the exercise of the rights and powers, specially conferred upon it by its own articles of incorporation, and also desires to provide for the payment and discharge of the said indebtedness to the city of Chicago, secured by

the purchase-money mortgage above described, at or before the maturity thereof, and for the payment, discharge or retirement of the said outstanding first-mortgage bonds of the Chicago and Great Western Railroad Company, and to provide such funds as may be necessary for the equipment, maintenance and operation of its railways and property, and for the other purposes hereinafter expressed; and

Whereas, for the purposes aforesaid and hereinafter in this indenture more fully expressed, the railroad company has, by due action of its stockholders and board of directors at meetings duly convened according to law, in the city of Chicago, State of Illinois, on the twenty-ninth day of March, A. D. 1890, determined to make and issue its first-mortgage bonds to an amount not exceeding in the aggregate of the principal thereof the sum of thirty millions of dollars ($30,000,000), payable at the office of the railroad company, in the city of New York, on the first day of April, A. D. 1940, in gold coin of the United States of America, of or equal to the present standard of weight and fineness, bearing interest at the rate of five (5) per centum per annum, payable semi-annually on the first day of April and the first day of October in each and every year,
267 according to the tenor of the coupons or interest warrants thereto annexed, free from any and all taxes, that may be required by any present or future laws of the United States of America, or of the State of Illinois, to be deducted from said principal or interest, numbered consecutively from one to thirty thousand, each of said bonds to be duly executed under the seal of the railroad company, signed by its president or vice-president and attested by its secretary or assistant secretary, and the interest coupons thereto annexed to be authenticated by or with the engraved signature of its treasurer; and

Whereas, in order to secure the payment of the principal and interest of all said bonds equally and ratably without priority or distinction, irrespective of the date of the issue of the same, the railroad company has, by due action of its stockholders and board of directors, as aforesaid, determined to execute and deliver this mortgage or deed of trust, and has further determined that each of said bonds shall be certified by the trustee, which certificate shall be conclusive, and the only proof that the same is secured by this indenture, and that each of said bonds shall be substantially as follows, that is to say:

(*Form of Bond.*)

UNITED STATES OF AMERICA, *State of Illinois.*

No. —. $1,000.

Chicago and Northern Pacific Railroad Company First-mortgage Five Per Cent. Fifty-year Gold Bond.

The Chicago and Northern Pacific Railroad Company, a
268 railroad corporation organized under the laws of the State of Illinois, for value received hereby acknowledges itself in-

debted unto the bearer of this bond or, if this bond be registered, to the registered holder thereof, in the sum of one thousand dollars, which it hereby promises to pay in United States gold coin of the present standard of weight and fineness on the first day of April A. D. 1940, at its office in the city of New York, with interest thereon from the first day of April A. D. 1890 at the rate of five per centum per annum, payable semi-annually on the first days of April and October on the presentation and surrender of the annexed coupons as they severally become due; such interest to be paid either in gold coin as aforesaid in New York, or in pounds sterling or reichsmark at its agencies in London, Berlin and Frankfort o/M, at bearer's election, as specified in said coupons.

All payments upon this bond both of principal and interest shall be made without deduction for any tax or taxes that said railroad company may be required to pay or to retain therefrom by any present or future laws of the United States of America or of the State of Illinois, said railroad company hereby covenanting and agreeing to pay any and all such tax or taxes.

This bond is one of a series of thirty thousand bonds all of the same tenor and date, numbered consecutively from one upwards and equally secured by a mortgage or deed of trust duly executed and delivered by the said railroad company to the Farmers' Loan and Trust Company, of New York, as trustee, bearing even date with this bond and covering the franchises and the real and personal property of the said railroad company as therein described, to all the provisions of which mortgage or deed of trust this bond and each coupon hereto attached are subject. The principal of this bond may, in case of default in the payment of the interest thereon, become due and payable before maturity upon the terms in
269 said mortgage provided. This bond, if unregistered, shall pass by delivery, but, if registered, by transfer upon the books of said railroad company in the city of New York.

After registration of ownership properly certified hereon, no transfer except and until recorded on the said books shall be valid, unless the last previous transfer shall have been to bearer, which shall restore transferability by delivery; and this bond shall continue subject to successive registrations and transfers to bearer at the option of each holder. Or the holder of this bond may at his option surrender the coupons annexed hereto to the said railroad company to be cancelled and may have this bond registered and such cancellation certified hereon and thereafter this bond shall not be transferable to bearer, but the interest shall be payable to the registered holder hereof on the first days of April and October in each year at the office of the said railroad company in the city of New York. This bond shall not be valid until authenticated by the certificate endorsed hereon duly signed by said trustee or its successor or successors in the trust.

In witness whereof, the said Chicago and Northern Pacific Railroad Company has caused this bond to be signed in its corporate name by its president or vice-president and its corporate seal to be

hereunto affixed and attested by its secretary or assistant secretary this first day of April A. D. 1890.

CHICAGO AND NORTHERN PACIFIC RAILROAD COMPANY,

By —— ——,
[CORPORATE SEAL.] *Vice-President.*

Attest: —— ——,
Assistant Secretary.

270 (*Form of Coupon.*)

£5.2.9. $25.

The Chicago and Northern Pacific Railroad Company will pay to bearer as he may elect, either twenty-five dollars U. S. gold coin at the company's office in New York city, or five pounds, two shillings and nine pence at its agency in London, or one hundred and five reichsmark at its agency in Berlin, or Frankfort o/M, on the first day of ——, being six months' interest on its first-mortgage bond No. —.

M. 105.

—— ——, *Treasurer.*

(Endorsed.)

Trustee's Certificate.

It is hereby certified that this bond is one of the series of bonds described in the mortgage or deed of trust therein mentioned, executed by the Chicago and Northern Pacific Railroad Company to the undersigned as trustee, bearing date the first day of April, A. D. 1890.

THE FARMERS' LOAN AND TRUST COMPANY, *Trustee,*
By —— ——, *Vice-President.*

Now, therefore, this indenture witnesseth as follows:

271 The Chicago and Northern Pacific Railroad Company, in consideration of the premises and of one dollar to it in hand paid by the trustee, at or before the execution and delivery of this indenture, the receipt whereof is hereby acknowledged, and in order to secure the due and punctual payment of the principal and interest of the bonds, to be issued as hereinbefore provided, to an amount not exceeding in the aggregate of the principal thereof, thirty millions of dollars ($30,000,000), has granted, bargained and sold, transferred, assigned, set over, released, conveyed and confirmed, and by this indenture does grant, bargain and sell, transfer, assign, set over, release,

convey and confirm unto the Farmers' Loan and Trust Company as trustee, and to its successor or successors in the trust, and its and their assigns forever, all and singular the following-described property, to wit:

Block eighty-eight (88) and the north half of block eighty-seven (87) in the School Section addition to the city of Chicago, State of Illinois, being a subdivision of section sixteen (16), township thirty-nine (39) north, range fourteen (14) east of the third (3rd) principal meridian, together with the railway tracks, buildings, stations, depots and other improvements situated thereon; also all the railway lines, premises and real and personal property, formerly belonging to the said Chicago and Great Western Railroad Company, which said property includes the railway lines now constructed, beginning at a point of connection with the railway tracks upon said block eighty-eight (88), and the north half of block eighty-seven (87), in the said School Section addition to the city of Chicago, above described, extending thence southerly and southwesterly across the South branch of the Chicago river north of Twelfth street in said city, thence in a southerly and southwesterly direction to Stewart avenue in said city, thence
272 in a general westerly direction through said city of Chicago to the west line of section sixteen (16), in the town of Cicero, Cook county, State of Illinois; also all the railway lines, premises and real and personal property, formerly belonging to the said Bridgeport and South Chicago Railroad Company, which said property now includes lands, railways and terminal facilities, forming part of a line of railway not yet completed, beginning at a point of connection with the line of railway formerly belonging to the Chicago and Great Western Railroad Company at or near Rebecca street in the city of Chicago, and extending thence in a general southerly and easterly direction to the southern and eastern limits of the county of Cook in the State of Illinois; and also all the railway lines, premises and real and personal property, formerly belonging to the Chicago, Harlem and Batavia Railway Company, which property includes the railway lines, commencing at a point of junction with the railway lines, formerly belonging to the said Chicago and Great Western Railroad Company, at or near Crawford avenue in the city of Chicago, extending thence northerly to a point at or near West Ran-

dolph street in said city; thence in a general westerly direction to a connection with the railway line of the Chicago and Wisconsin Railroad Company in the county of Cook, State of Illinois, with a branch line running in a general southerly direction to a point at or near Des Plaines avenue, in said county of Cook, State of Illinois, together with all the corporate rights, franchises, ordinances and privileges of the said several railway corporations, connected with or appurtenant to the construction, maintenance and operation of the said above-described railway lines.

Together with all the lands, tenements, hereditaments, easements and appurtenances belonging or in anywise appertaining thereto, and all
273 the railways, ways and rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, elevators, warehouses, power plants, machine and repair shops and their equipment, water tanks, turn-tables, superstructures, erections, buildings and fixtures, belonging to or connected with said lines of railway, hereinbefore particularly described, or the business thereof; also all locomotives, tenders, cars and other rolling stock, equipment, rails, ties, fastenings, switches, side tracks, machinery, tools and implements now owned by the railroad company, or hereafter acquired for use upon said railway lines; also all corporate rights, privileges, immunities, franchises and ordinances now held, possessed, or hereafter acquired by the railroad company, connected with or relating to the construction, operation, maintenance, use or enjoyment of said railway lines; also all other lands, leaseholds, premises and properties, real or personal, of whatever kind or description, now owned, or which may hereafter be acquired by the railroad company by the use of the bonds hereby secured or the proceeds thereof; also the indenture of contract and lease bearing even date herewith, intended to be executed forthwith upon the execution of this indenture, made between the railroad company, party of the first part, and the Wisconsin Central Company and the Wisconsin Central Railroad Company, parties of the second part, and also all other leases and contracts, hereafter made by the railroad company with other railway corporations for rights over or upon the lines of railway, hereinbefore particularly described; *subject*, however,

to the said purchase-money mortgage to the city of Chicago upon said block eighty-eight (88), and the north half of block eighty-seven (87) in the School Section addition to the said city of Chicago,
and the depots, buildings, erections and
274 improvements thereon, to secure the said
sum of six hundred and fifty thousand dollars ($650,000) and interest; and *subject further* to the lien of the said mortgage or deed of trust, given by the said Chicago and Great Western Railroad Company to John A. Stewart and Edwin H. Abbot, trustees, dated the first day of May, A. D. 1886, hereinbefore more particularly described, under which only bonds of the par value of three hundred and ninety-nine thousand dollars ($399,000) are now outstanding as aforesaid.

To have and to hold the said lands, premises, stations, facilities, railways, property, appurtenances, estates, rights, titles, interests, privileges, immunities and franchises unto the Farmers' Loan and Trust Company, in the city of New York, its successor or successors, forever;

In trust, nevertheless, for the equal, *pro rata* benefit and security of all and every the persons or corporations, who may be or become holders of any of the said bonds hereby secured, without any preference or priority of one bond over another, or others, by reason of priority in the time of issue or negotiation thereof, or otherwise, and for the uses and purposes hereinafter declared and expressed.

It is hereby expressly covenanted and agreed by and between the parties hereto, the railroad company covenanting as well for itself as for its successor or successors and assigns, and the trustee covenanting as well for itself as for its successor or successors in the trust, that the said above-described lands, premises, railroad property, rights, franchises and appurtenances are to be held by the trustee upon and for the trusts, uses and purposes following, that is to say:

Issue of bonds not to exceed $30,000,000.

Article I. The bonds to be issued under and secured by this indenture shall not exceed, in the aggregate of the principal thereof, the sum of
thirty millions of dollars ($30,000,000), and
275 all the said bonds shall forthwith be executed by the railroad company and delivered to the trustee.

It shall be the duty of the trustee from time to time to certify the said bonds, and redeliver the same to the railroad company for issue, or to use

and apply the same as hereinafter in the next succeeding article of this indenture provided.

18,850 bonds to be certified immediately to pay for properties acquired.

Article II. (*a.*) Eighteen thousand eight hundred and fifty (18,850) bonds shall be immediately certified by the trustee and redelivered to the railroad company to be issued and used by it in payment for the lands, premises and railway property, heretofore acquired by it, as afore aid, by deed from John P. Neal and Marguerite L. Neal, his wife, and from the Chicago and Great Western Railroad Company, the Bridgeport and South Chicago Railroad Company and the Chicago, Harlem and Batavia Railway Company, in accordance with the covenants and obligations on the part of the railroad company, contained in its subsisting contracts for the acquisition of the said lands, premises and railway property.

650 bonds reserved to provide for mortgage to city of Chicago.

(*b.*) Six hundred and fifty (650) bonds shall be reserved and held by the trustee to provide for the payment or discharge of the principal and interest of the said indebtedness to the city of Chicago of six hundred and fifty thousand dollars ($650,000), secured by the said purchase-money mortgage, hereinbefore described. The trustee shall certify and deliver to the railroad company the said bonds, by this subdivision of this article reserved, whenever it shall be required to do so by resolutions of the boards of directors of the railroad company and of the Northern Pacific Railroad Company, requesting such certification and delivery for the purpose of paying, or otherwise retiring or refunding the said
276 indebtedness to the city of Chicago, and showing the terms upon which the said bonds are to be used, or the prices at which they are to be sold, and their proceeds applied.

399 bonds reserved to provide for outstanding C. & G. W. bonds.

(*c.*) Three hundred and ninety-nine (399) bonds shall be reserved and held by the trustee for the purpose of providing for the purchase, payment or retirement of the said first-mortgage bonds of the Chicago and Great Western Railroad Company, now outstanding as aforesaid to the amount of three hundred and ninety-nine thousand dollars ($399,000), which said bonds so reserved shall from time to time be certified by the trustee and delivered to the railroad company, upon delivery to the trustee in exchange therefor of an amount of the said first-mortgage bonds of the Chicago and Great Western Railroad Company, equal at their par value to the amount of said bonds, so from time to time certified and delivered, pro-

vided, however, that the said trustee shall, whenever requested so to do by resolutions of the boards of directors of the railroad company and of the Northern Pacific Railroad Company, from time to time certify and itself sell the bonds, by this subdivision of this article reserved, at such prices and in such amounts as shall be prescribed in said resolutions, and apply the proceeds thereof to the purchase of the said outstanding bonds of the Chicago and Great Western Railroad Company at such prices as shall in said resolutions be designated and approved.

1,000 bonds to be immediately certified and delivered to the railroad company.

(*d.*) One thousand bonds shall be immediately certified by the trustee and redelivered to the railroad company to be used or sold, if necessary, with the approval of the board of directors of the Northern Pacific Railroad Company, to provide funds for the payment of interest upon the outstanding bonds, secured hereby, so far as
277 such interest cannot be paid from the rentals and net earnings of the railroad company, applicable thereto, down to and including the first day of April, A. D. 1893, and any balance of said bonds thereafter remaining may be used, sold or otherwise applied by it for and to such uses and purposes as may be determined by its board of directors and the board of directors of the Northern Pacific Railroad Company.

9,101 remaining bonds certified and used whenever required by resolutions of R. R. Co. and N. P. R. R. Co.

(*e.*) All the remaining bonds, to wit, nine thousand one hundred and one (9,101), shall be certified by the trustee and delivered to the railroad company at such times and in such amounts as shall be required by resolutions of the boards of directors of the railroad company and of the Northern Pacific Railroad Company.

In all cases the resolutions of the boards of directors of the railroad company and of the Northern Pacific Railroad Company, whenever required as aforesaid, shall be conclusive authority to the trustee for the certification and delivery of the said bonds.

Purposes for which bonds may be used.

Article III. The railroad company hereby covenants and agrees to use and expend the bonds, certified and delivered to it under subdivision (*e*) of article II of this indenture, and the proceeds thereof, for the improvement, maintenance or betterment of the lands, premises, railways and other property, conveyed by this indenture, or for the completion, erection or construction of buildings, warehouses, elevators, depots, stations, engine-houses, power plants, machine and repair

shops and their equipment, tracks, bridges, viaducts, culverts and other permanent improvements and facilities, terminal and otherwise, connected therewith, or for the acquisition or purchase of rolling stock and equipment, the maintenance, replacement and operation of its railway lines, or for the purchase or acquisition of other lands, premises, railway lines, buildings or properties, which may be used in connection with and
278 as a part of the railway lines, premises and property, hereby conveyed; and to the extent that such additional lands, premises, railway lines, buildings or properties are acquired by the use of the said bonds, or the proceeds thereof, they shall be brought within and become subject to the lien created by this indenture, as a first lien thereon, but it is expressly declared to be the intention of this indenture that it shall not apply or extend to or create a lien upon any property, hereafter acquired by the railroad company, except such as shall be acquired by the use of the bonds to be secured by this indenture or the proceeds thereof.

It is further covenanted and agreed that the railroad company shall promptly, from time to time, convey to the trustee by proper trust deed or mortgage, as hereinafter provided in article XVIII of this indenture, all lands, premises, railway lines, buildings or properties, that may hereafter be purchased or acquired by the use of the said bonds or of the proceeds thereof.

It is further covenanted and agreed by and between the parties hereto, that the railroad company shall be at liberty to pay or otherwise discharge or refund the said indebtedness of six hundred and fifty thousand dollars ($650,000), principal and interest, secured by the said purchase-money mortgage to the city of Chicago, and to purchase or otherwise acquire any of the said outstanding first-mortgage bonds of the Chicago and Great Western Railroad Company by the use of its resourses other than the said bonds in subdivisions (*b*) and (*c*) of article II of this indenture reserved or their proceeds; and if the said indebtedness to the city of Chicago shall be paid, discharged or otherwise converted or refunded by the railroad company without the use of the bonds heretofore reserved for that purpose by said subdivision (*b*), then and in that event the
279 trustee shall, upon demand of the railroad company and of the Northern Pacific Rail-

road Company, to be evidenced by resolutions of their boards of directors, and upon the production of satisfactory evidence of the discharge and cancellation of the said purchase-money mortgage, securing the said indebtedness, certify and deliver to the railroad company, the said bonds, by said subdivision (*b*) reserved as aforesaid, to be used by the railroad company for its general corporate purposes. And in case the railroad company shall, without the use of the bonds by said subdivision (*c*) of article II of this indenture reserved, purchase or acquire any of the said outstanding first-mortgage bonds of the said Chicago and Great Western Railroad Company, the trustee shall, upon the production and delivery to it of any of the said bonds so purchased or acquired, from time to time certify and deliver to the railroad company an equal amount of the said bonds, by said subdivision (*c*) reserved, to be used by the railroad company for its general corporate purposes.

If the bonds, hereinbefore, in said subdivisions (*b*) and (*c*) reserved, shall not be sufficient for the purposes therein expressed, after having been sold, used or otherwise applied thereto, as in said subdivisions provided, then and in that event the trustee shall certify and deliver to the railroad company when required so to do by resolutions of its board of directors, and of the board of directors of the Northern Pacific Railroad Company, such of the bonds in subdivision (*c*) of article II enumerated, then remaining in the hands of the trustee, as shall be required to accomplish the said purposes in said subdivisions (*b*) and (*c*) expressed, so far as then unfulfilled.

C. & G. W. bonds to be cancelled as acquired.

Article IV. It is hereby mutually covenanted and agreed that, whenever from time to time any of the said outstanding first-mortgage bonds
280 of the Chicago and Great Western Railroad Company shall be acquired by the railroad company and delivered to the trustee, or purchased by the trustee, under and in accordance with the provisions in this indenture contained, the trustee shall thereupon cancel the said bonds, and from time to time, as so received, purchased and cancelled, deliver the same to John A. Stewart and Edwin H. Abbot, trustees under the said mortgage or deed of trust, securing the same, hereinbefore described, or to the survivor of them or his or their successor or successors in the trust.

And when all of said bonds have been can-

celled, the railroad company hereby further covenants and agrees to cause the said mortgage or deed of trust to be duly cancelled and discharged of record.

Railroad company to pay bonds and coupons and taxes, and waiver of stay and appraisement laws.

Article V. The railroad company hereby covenants and agrees to pay to the lawful holder of each and every the bonds secured by this indenture, the principal thereof and the interest thereon, in accordance with the tenor of the said bonds and of the coupons annexed thereto, when and as the same shall respectively become due and payable, free from any and all taxes that may be required by any present or future laws of the United States of America or of the State of Illinois, to be deducted from either the principal or interest of said bonds. The railroad company further covenants and agrees to pay all and every the lawful taxes that may at any time be assessed by any lawful authority upon the premises hereby conveyed and every part thereof, when and as necessary to protect the same against the lien of such taxes. The railroad company further covenants and agrees to and does hereby waive the benefit of any extension, stay, appraisement or redemption laws, now existing or that may hereafter exist, of the United States of America, the State of Illinois, and of any other State
281 into which its railway lines may extend.

Railroad company may acquire additional railways and properties.

Article VI. It is hereby mutually covenanted and agreed that the railroad company may construct, purchase or otherwise acquire and maintain and operate additional railway lines or properties, other than those hereinbefore particularly described, and whenever and to the extent that such additional railway lines or properties shall be constructed, purchased or otherwise acquired without the use of the bonds, or the proceeds thereof, to be issued under and secured by this indenture, then and in every such case the railroad company shall have the right to provide funds for the construction, purchase or acquisition and maintenance and operation thereof by the issue of bonds to be secured by lien, free from the lien of this indenture, upon the properties so constructed, purchased or otherwise acquired, or by lien, subject to the lien of this indenture upon the property hereby conveyed, or by such other means as may from time to time be deemed judicious and proper, not impairing the priority of this indenture upon the property hereby conveyed.

Leases to be assigned as additional security to bonds.

Article VII. Whereas, the railroad company has heretofore agreed to make and enter into an indenture of contract and lease, demising to the Wisconsin Central and Wisconsin Central Railroad Companies for the term of ninety-nine (99) years, all the railways and other property conveyed by this indenture, and the said Wisconsin Central and Wisconsin Central Railroad Companies have agreed to make and enter into an indenture of contract and lease, demising to the Northern Pacific Railroad Company, for the term of ninety-nine (99) years, all their system of railways, known as the Wisconsin Central system, and also all the railways and property to be demised and let to them under the first-mentioned indenture of contract and lease from
282 the railroad company; and

Whereas, the Northern Pacific Railroad Company by the terms of the second above mentioned indenture has agreed to assume all the obligations of the Wisconsin Central and Wisconsin Central Railroad Companies under the said first above-mentioned indenture; and

Whereas, the said first mentioned indenture of contract and lease, as heretofore agreed upon, is by its terms to be dated simultaneously with, and to be expressly subject to this indenture, and to be executed, entered into and delivered immediately after the execution and delivery of this indenture; and

Whereas, the said indenture of contract and lease from the Wisconsin Central and Wisconsin Central Railroad Companies to the Northern Pacific Railroad Company is by its terms to be dated simultaneously with this indenture and with the said first-mentioned indenture from the railroad company to the Wisconsin Central and Wisconsin Central Railroad Companies, and is to be executed and delivered immediately after the execution and delivery of the said last-mentioned indenture; and

Whereas, it has been mutually covenanted and agreed by and between the railroad company and the parties to the said above-described indentures of contract and lease, that the said first-mentioned indenture of contract and lease should be assigned as additional security for the bonds to be issued under this indenture to the extent hereinafter in this article provided;

Now, therefore, the railroad company hereby

covenants and agrees to, and does hereby
283 assign, transfer and set over unto the trustee, upon the trusts herein contained, as additional security for the bonds to be issued under this indenture, the said indenture of contract and lease, to be entered into by it with the said Wisconsin Central and Wisconsin Central Railroad Companies, and all its right, title and interest therein and thereto, and all the rights, benefits, covenants and privileges secured to it thereby and by the said indenture of contract and lease from the said Wisconsin Central and Wisconsin Central Railroad Companies to the Northern Pacific Railroad Company, to the extent that the said first-mentioned indenture of contract and lease covers the railways, rights and property conveyed by this indenture and no further; it being hereby expressly declared to be the intention of the parties hereto, that the assignment hereby made shall not extend to, embrace, or in any way affect any railways or other property of the railroad company, which may come under the operation of the said indenture of contract and lease last referred to, which are not conveyed by this indenture, or not acquired by the proceeds of the bonds to be issued hereunder: Provided, however, and this assignment is made upon the express condition, that none of the rights, benefits, covenants and privileges, secured to the railroad company in and by the said indentures of contract and lease, shall ever be exercised by the trustee under this indenture, so long as the railroad company is not in default in respect to the payment of interest upon its bonds, to be issued under this indenture, or the principal thereof; but, in case any default shall occur by the railroad company in the payment of the principal of any of the bonds to be issued under this indenture, or of the interest thereon, according to the tenor of the coupons annexed thereto, and such default shall continue for the period of sixty days after
demand in writing, made by the holders
284 of any of the said bonds or coupons upon the railroad company at its office in the city of New York, then and in every such case the trustee shall be vested with and may exercise at its discretion each and every the powers conferred upon the railroad company by the said indentures of contract and lease, or either of them, so long as such default continues and no longer, including the power to take whatever steps it

may deem expedient or proper, either in its own name or in the name of the railroad company, for the collection of the rentals accruing under the said first above mentioned indenture of contract and lease, and under any and all other then existing leases by the railroad company of the property hereby conveyed and under any and all then existing subleases of said property, and for the application of the same to the payment of the interest upon the bonds hereby secured.

And provided further that, if and whenever the railroad company shall make good any such default, subject to the provisions hereafter in this indenture contained, it shall thereupon be revested with all the rights, powers and privileges secured to it by the said indentures of contract and lease, or either of them, as if no such default had ever been made; and, until such default shall occur and continue as aforesaid, the railroad company shall possess, exercise and enjoy all the rights, benefits, covenants and privileges secured to it by the said indentures of contract and lease, and each of them, in the same manner and to the same extent as if this assignment had never been made.

It is hereby mutually covenanted and agreed that so long as the railroad company is not in default, as in this article provided, or after the removal or waiver of any default that may have occurred, as herein provided, it shall be at full liberty to change or modify the said indenture of contract and lease with the said Wisconsin Central and Wisconsin Central Railroad Com-
285 panies in any way, which may be agreed upon by and between the parties thereto and the Northern Pacific Railroad Company, excepting only that no change shall ever be made shortening the term of duration of the said indenture of contract and lease, or in any of its terms, whereby the rentals stated or contingent to be paid thereunder to the railroad company shall be diminished, or the obligations of the Wisconsin Central and Wisconsin Central Railroad Companies and the Northern Pacific Railroad Company, their respective successors and assigns, in respect to the payment of such rentals and the consequences of any default therein, shall be lessened or impaired, unless such change shall first have been in writing expressly assented to by the trustee and by a majority of the holders of the bonds to be issued under this indenture, then outstanding, which assent in writing by the

said bondholders may be expressed under their hands and seals or by vote at a meeting held as hereinafter provided.

It is hereby further mutually covenanted and agreed, in view of the covenants of the Northern Pacific Railroad Company, contained in the said indenture of contract and lease with the Wisconsin Central and Wisconsin Central Railroad Companies, whereby the Northern Pacific Railroad Company assumes all the obligations of the Wisconsin Central and Wisconsin Central Railroad Companies, under the said first above mentioned indenture of contract and lease, between the railroad company and the Wisconsin Central and Wisconsin Central Railroad Companies, insuring to the railroad company sufficient revenue to provide for the payment of the interest upon the bonds to be issued under this indenture, that none of the said bonds, except such as are provided to be immediately certified and delivered under and in pursuance of subdivisions (*a*) and (*d*) of article II of this indenture, shall ever be certified and delivered to the railroad company, except
286 by the consent of the Northern Pacific Railroad Company, to be evidenced by resolutions of its board of directors.

It is hereby mutually covenanted and agreed that the property hereby conveyed, and all other property, that may hereafter be acquired by the railroad company, which, under the provisions of this indenture, shall become subject to the lien hereby created, may be leased in whole or in part by the railroad company, with the assent of the Northern Pacific Railroad Company, to any person or persons, corporation or corporations whatsoever, desiring to acquire a lease thereof, or to enjoy the terminal or other facilities, or any part thereof, now belonging to or hereafter acquired by the railroad company. And that the railroad company shall be at full liberty at its discretion, from time to time, and at all times, to make any changes or alterations in, and to surrender, accept the surrender of, change, amend, modify or annul any such leases now existing or hereafter made, except leases of its terminal facilities to railway corporations, whenever it may deem it wise so to do; provided, however, that all leases of its terminal facilities to railway corporations shall be subject to the lien of this indenture, and shall, upon request of the trustee be assigned to it, in the same manner, and to the same extent, and

for the same purposes, as hereinbefore provided in respect to the said indenture of contract and lease between the railroad company and the Wisconsin Central and Wisconsin Central Railroad Companies and no further; and provided further, that the railroad company, until default in the payment of the interest upon any of the bonds to be issued hereunder, or of the principal thereof, as hereinbefore in this article specified, shall have the same power to make and assent to any changes or modifications in such leases to railway corporations as it has in respect to the said last-mentioned indenture from the railroad company
287 to the Wisconsin Central and Wisconsin Central Railroad Companies, and no further.

Railroad company to enjoy mortgaged property until default.

Article VIII. Until default shall be made by the railroad company in the payment of the principal or interest of the bonds hereby secured, or any of them, or in respect of some act or thing, covenant or agreement herein required by it to be done, performed or kept, the railroad company shall be suffered and permitted to possess, manage, operate and enjoy the said lines of railroad and the appurtenances, and the said lands and other property, and the rights, privileges, immunities and franchises hereinbefore mentioned, and to take and apply to its own use the tolls, incomes, revenues, proceeds, rents, issues and profits thereof, as if this indenture had not been made.

Right of trustee to enter and operate road in case of default.

Article IX. In case default shall be made in the payment of any of the interest on any of the bonds issued or to be issued under and secured by this indenture, or in any requirement herein contained, to be done or kept by the railroad company, and if any such default shall continue for the period of six months, then the trustee may, and upon requisition and indemnity, as hereinafter prescribed in article XI of this indenture, the trustee shall, personally or by its attorneys or agents, enter into and upon all and singular the said railroads, with the appurtenances, and all other the property and franchises belonging thereto, and hereby conveyed, or meant or intended so to be, and each and every part thereof, and wholly exclude the said railroad company and its agents therefrom; and have, hold, and use the same as the said railroad company could or might do if this indenture had not been made; operating by its managers, superin-

tendents, receivers, or servants, or other attorneys or agents, the said railroads, and conducting the business thereof, and exercising the franchises pertaining thereto; and making from time
288 to time all repairs and replacements and such useful alterations, additions and improvements therein and thereto as may seem to be necessary or judicious; and collect and receive all tolls, freights, incomes, rents, issues and profits of the same, and of every part thereof; and after deducting the expenses of operating the said railroads and of conducting the business thereof, and of all the said repairs, replacements, alterations, additions and improvements, and all payments, which may be made for taxes, assessments, charges or liens prior to the lien of this indenture, upon the said premises or any part thereof, as well as a just compensation for its own services, shall apply the money arising, as aforesaid, to the payment of the interest on the bonds, hereby secured, in the order in which such interest shall have become due, ratably, to the persons entitled to such interest; and if, after paying all interest which shall have become due, a surplus shall remain, such surplus, and the property herein mentioned and included, shall be forthwith paid and returned to the said railroad company.

Right of trustee to enter and sell in case of default.

Article X. In case default shall be made as aforesaid, and shall continue as aforesaid, or in case default be made in the payment of any of the principal of said bonds when the same shall become due, the trustee may, and upon requisition and indemnity, as in article XI of this indenture prescribed, the trustee shall, after entry, as aforesaid, or without entry, personally, or by its attorneys or agents, sell and dispose of, subject to the said prior mortgages, so long as they or either of them remain unsatisfied, all and singular the said railroads, and the said leases assigned or to be assigned to it, as hereinbefore provided, with or without entry under said leases, and subject to or free from the estates created by said leases or any of them, as to the trustee shall seem best, and
289 all the estate, right, title and interest of the said railroad company in and to the same, with the appurtenances, and all other the property, rights, privileges, immunities and franchises thereto belonging and hereby conveyed, or intended so to be, as an entirety, to the highest and best bidder or bidders, at public auction, in the city of Chicago, State of Illinois, and at such

time as it shall appoint, having first given notice of the time and place of such sale, by advertisement, published not less than three times in each week, for six successive weeks, in one or more newspapers printed and published in the cities of Boston, New York, and Chicago, of general circulation in the business communities of said cities, or may adjourn the said sale from time to time in its discretion, and, if so adjourned, make the said sale at the time and place to which the same may be so adjourned; and make and deliver to the purchaser or purchasers of the said railroads, with the appurtenances, and all other the said property, rights, privileges, immunities, and franchises thereto belonging, good and sufficient deed or deeds thereof, in fee-simple; which sale, made as aforesaid, shall be a perpetual bar, both in law and in equity, against the said railroad company, and all persons claiming or to claim the said described property, or any part thereof, or any interest therein, by, from, through, or under it; and after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees, and all other expenses, advances, or liabilities, which may have been made or incurred by it in operating or maintaining the said railroads and property, or in managing the business thereof, while in possession, and all payments, which may have been made by it for taxes or assessments on said lines of railroad, or the appurtenances or other property thereto belonging, or any part
290 thereof, as well as reasonable compensation for its own services, it shall be lawful for the trustee, and it shall be its duty to apply the residue of the money arising from the said sale to the payment of the principal of the bonds, which shall have been issued under this indenture and shall then be outstanding and unpaid, whether the same shall have previously become due or not, and to the payment of the interest which shall have at that time accrued on the said principal and be unpaid, without discrimination or preference of principal over interest or of interest over principal, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and if, after satisfaction thereof, a surplus of the said proceeds shall remain, to pay over the same to the railroad company, or to such other party or parties as may be entitled thereto.

Duty of trustee upon requisition and indemnity.

Article XI. In case default shall be made in the payment of any semi-annual installment of interest on any of the said bonds, and if such interest shall remain unpaid and in arrears for the period of six months, or in respect of any requirement, covenant, or agreement herein contained on the part of the railroad company to be observed, done, kept, or performed, and if any such default shall continue for the period of six months, or in case default shall be made in the payment of the principal of said bonds, then, and in either or any or every such case, it shall be the duty of the trustee, upon a requisition in writing signed by the holders of not less than one-quarter in amount of the said bonds then outstanding, and upon adequate security and indemnity against all costs, expenses and liabilities to be by the trustee incurred, to proceed to enforce the rights of the bondholders under this indenture either by the exercise of the powers granted by articles IX and X of this indenture, or of
291 any of said powers, or by a suit or suits in equity or at law in aid of the execution of such powers, or otherwise, as the trustee, being advised by counsel, shall deem most effectual to enforce such rights, subject to the power hereby declared of a majority in interest of the holders of said bonds that shall be then outstanding, in writing, or by vote at a meeting duly held, to instruct the trustee to waive any such default, or, upon adequate security and indemnity as aforesaid, to enforce the rights of the bondholders by reason thereof:

Provided, that no action of the trustee or of the bondholders in waiving a default, shall extend to, or be taken to apply to, or affect any subsequent default, or impair the rights of the trustee or of the bondholders resulting from such subsequent default, it being understood, and it is hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, additional to all other remedies allowed by law, and that the same shall not be deemed, in any manner whatsoever, to deprive the trustee or the beneficiaries under this trust, of any legal or equitable remedy by judicial proceedings, consistent with the provisions of this indenture, according to the true intent and meaning thereof: Provided always, and it is hereby expressly declared and agreed, that no holder or holders of a bond or of any bonds, secured hereby, shall have

the right to institute any suit, action or proceeding, in equity or at law, for the foreclosure of this indenture, or for the execution of the trusts thereof, or for the appointment of a receiver, or any other action, suit, or remedy hereunder, or under or upon any bond or coupon for interest hereby secured, without first giving notice in writing to the trustee of default having occurred and continued as in this article aforesaid, and requesting the trustee, and affording it a reasonable opportunity, to institute such action,
292 suit, or proceeding in its own name, or to proceed to exercise the powers hereinbefore granted, and also offering to it adequate security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared to be conditions precedent to any suit or action for the foreclosure or for the execution of the trusts of this indenture, or for the appointment of a receiver, and to any other action, suit, or remedy hereunder, or under or upon any bond or coupon for interest hereby secured. And it is hereby provided, declared, and agreed that, in case any sale shall be made of the said railroads, chattels real, interests, estates, appurtenances, fixtures, equipment, property, lands, rights, privileges, immunities, or franchises, either by the exercise of the powers granted in article X of this indenture, or pursuant to or under a decree or judgment of a court of competent jurisdiction, the purchaser or purchasers at said sale or sales shall be entitled, in making settlement for, and payment of, the purchase-money, to deliver to the trustee, or, in case of a judicial sale, to the person or persons legally appointed and qualified to receive the payment of such purchase-money, and to turn in and use any of the bonds or coupons secured by this indenture, held by the said purchaser or purchasers, in or towards the payment of said purchase-money; reckoning and computing said bonds or coupons at a sum equal to, and not exceeding, that which would be payable out of the net proceeds of said sale, if made for money, to the purchaser or purchasers, as the holder or holders of said bonds or coupons, for his or their just share and proportion in that character of such net proceeds, upon a due accounting, and apportionment and distribution of said net proceeds.

Trustee's receipt to purchasers.

Article XII. It is hereby declared that the receipt or receipts of the trustee shall be a
293 sufficient discharge to the purchaser or purchasers at any sale or sales made by the said trustee under or in pursuance of either of said articles X or XI for his or their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not, after payment thereof, and having such receipt, be liable to see to its being applied for or upon the purposes and trusts of this indenture; or in any manner howsoever be answerable for any loss, misapplication, or non-application of such purchase-moneys, or any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

Trustee may purchase for bondholders.

Article XIII. At any sale or sales of the aforesaid lines of railroad, appurtenances, lands, premises, real estate, chattels real, property, rights, interests, and franchises, whether made by virtue of any power herein granted or by judicial authority, the trustee, upon the request of the holders of three-fourths in amount of the bonds outstanding, may bid for and purchase, or cause to be bid for and purchased, the same, for and in behalf of all the holders of the bonds hereby secured and then outstanding, in the proportion of the respective interests of such bondholders, at a price not exceeding the whole amount of such bonds outstanding, with the interest accrued thereon, and the expenses of such sale or sales.

Trustee may declare principal due.

Article XIV. In case default shall be made in the payment of any installment of interest on any of the aforesaid bonds hereby secured, when such interest shall become due and payable according to the terms of said bonds, or of any coupon thereto annexed, and if such default shall continue for the period of six months, then, and in such case, the principal of all the bonds
294 secured by this indenture shall, at the election of the trustee, become immediately due and payable, anything in the said bonds or herein contained to the contrary notwithstanding. But a majority in interest of the holders of all said bonds that shall be then outstanding may, in writing, or by vote at a meeting duly held as herein provided, instruct the trustee in such case, to declare the said principal to be due, or to waive the right so to declare, on such terms and conditions as such majority shall deem proper; or may annul or reverse the election of the trustee:

Provided, that no waiver of or by the trustee or bondholders shall extend to, or be taken to affect, any subsequent default, or impair the rights resulting from such subsequent default.

Trustee's power to release.

Article XV. The trustee shall at all times during the continuance of the trust hereby created, when required so to do, as hereinafter in this article provided, release and convey to any party or parties, who may be designated in writing by the railroad company to receive such release or conveyance, or release from the lien or operation of this indenture in such other manner as the trustee may deem proper, any portion of the premises and property hereinbefore granted, which may be appurtenant to the said lines of railway, but which shall be unnecessary for use in connection therewith, or which shall have been acquired or held for stations, depots, shops or other buildings, or for a supply of fuel, gravel or other material, and also shall release or convey as aforesaid any lands, which may become disused by reason of a change of the location of any station-houses, depots, shops, or other buildings connected with the said lines of railway, or which the railroad company may deem it expedient to disuse or abandon, by reason of such
295 change, and shall also when required as aforesaid, consent to changes in the location of the track or of station-houses, depots, shops or other buildings, and to exchanges of property and readjustment of boundaries, and shall execute and deliver the instruments necessary or proper to carry the same into effect; provided, however, that the releases or conveyances or other consents or instruments, provided to be made by the trustee under the authority of this article, shall be executed or given only upon the written request of the president of the railroad company, showing the reasons therefor, accompanied by an affidavit of the chief engineer or other proper officer of the railroad company, stating the facts upon which such request is made, and accompanied also by the consent of the Northern Pacific Railroad Company, evidenced by a certified copy of the resolution of its board of directors, to that effect, which said request and consent, so evidenced, shall in all cases be conclusive authority to the trustee for the execution and delivery of such releases, conveyances, consents, or other instruments; and provided further, that any lands, premises or property, which may be acquired for

permanent use in substitution for any lands, premises or property released under the provisions of this article, shall become and be, immediately upon the acquisition of the same, subject to the terms of this indenture. The railroad company shall be at full liberty from time to time to dispose of, according to its discretion, such portion of the machinery, tools and implements which shall be at any time acquired or held for the use of said lines of railway, and of the other property hereby conveyed, as shall have become unfit or unnecessary for such use, but any and all new and other machinery, tools and implements, which may be acquired in substitution for any so released, shall, by virtue and
296 force of this indenture, become and be, immediately upon the acquisition of the same, subject to the lien and operation of this indenture, without any new conveyance or transfer or other act or proceeding whatsoever.

Subject to the said prior mortgages and to the rights of the mortgagees therein and the beneficiaries thereof, the railroad company shall be at full liberty to use any and all moneys or securities, which it may receive for or upon any sale, lease or other disposition of any property, made under the provisions of this article, for the purchase or acquisition of other property, or for the improvement of the property hereby conveyed, including all the purposes specified in article III of this indenture, provided, however, that the consent of the Northern Pacific Railroad Company shall be obtained to such purchase or acquisition or other use of such moneys and securities, and such purchase or acquisition shall be so made, as that the property so purchased or acquired shall come under and be subject to this indenture as a first lien thereon; and in case and to the extent that the moneys or securities, so received by the railroad company, shall not be so used for the purchase or acquisition of other property, or for the improvement of the property hereby conveyed, the railroad company shall pay over, assign and transfer the same to the trustee, upon its request, for and upon the purposes and trusts expressed and declared in this indenture, or intended so to be, and the moneys so received by the trustee shall be deposited by it in the Farmers' Loan and Trust Company or some other trust company in the city of New York, on interest, to be paid and accumulated as capital, semi-annually, and the said

money, together with all accumulations of interest thereon, shall be invested by the trustee in the bonds hereby secured, by the purchase thereof in the open market from time to time, provided the same can be purchased at a price which
297 shall be satisfactory to the trustee and to the Northern Pacific Railroad Company; but in case said bonds cannot be purchased at such a price, then said moneys, together with all said accumulations of interest thereon, shall be invested by the trustee in other mortgage bonds of American railroad corporations, to be approved by the Northern Pacific Railroad Company, which said other mortgage bonds shall be held by the trustee as additional security to the bonds to be issued under this indenture; and if any of the said bonds so held shall be paid or redeemed, the proceeds thereof shall be reinvested in a similar manner, and all interest that shall mature and be paid upon said bonds so held shall be applied by the trustee from time to time toward the payment of the interest to mature on the bonds to be issued under this indenture, or paid to the railroad company for that purpose, so long as there shall be no default by the railroad company in any of its covenants contained in this indenture.

And provided further, that the trustee shall be at liberty, from time to time in its discretion, to change its investments in any of said bonds of railroad corporations, other than the railroad company, or to convert the same into cash, and to apply the cash so realized, from time to time, in the purchase of the bonds, secured by this indenture, whenever and to the extent that the same can be acquired upon terms satisfactory to the trustee and to the Northern Pacific Railroad Company as aforesaid.

Definition of trustee and provisions for responsibility, resignation, removal and appointment.

Article XVI. It is mutually understood and agreed by and between the parties hereto, that the word "trustee," when and as used in this indenture, except where some other meaning is plain, is intended to refer to and describe, and shall be construed to mean, the corporation or corporations, or the person or persons, which or who, for the time being, shall be charged with the
298 execution of the trusts hereof, whether the same be the said party of the second part or any successor or successors in said trust.

It is further mutually agreed by and between the said parties hereto, as a condition on which the party of the second part has assented, and

does assent to this indenture, that the trustee shall not, in any manner, be responsible or liable for any act, default or misconduct of any agent or agents by it employed; nor shall it be answerable, under any circumstances, except for its own willful default or misconduct; that the trustee shall be entitled to just compensation for all services which it may hereafter render in said trust, to be paid from the trust funds which may come into its hands; and that the trustee may resign and be discharged of the trusts hereby created, by notice in writing to the railroad company, three months before such resignation shall take effect, or such shorter time as the railroad company shall accept as adequate notice.

It is further declared and agreed that the trustee may be removed by a majority in interest of the holders of all said bonds hereby secured and then outstanding, by instrument or instruments in writing under their hands and seals, or by vote at a meeting duly called and held as herein provided.

In case of the resignation or removal of the trustee a successor shall be appointed by the majority in interest of the holders of all said bonds, hereby secured and then outstanding, by instrument or instruments in writing, under their hands and seals, or by vote at a meeting as aforesaid; and until an appointment be so made the president of the railroad company, with the written approval and consent of the holders of the outstanding bonds, secured hereby, to the aggregate amount of two millions of dollars, may appoint a trustee to fill such vacancy for the time being; and in such case, and also in case of an appointment by a majority in interest of the bondholders as aforesaid, and in all other cases where a
299 change is made in the trustee or trustees, the new trustee or trustees, successor or successors, shall thereupon become and be vested with all the powers, authorities, estates, rights, titles, and interests granted or conveyed to, or conferred upon the said party of the second part by this indenture, and all the rights, powers, authorities and interests, requisite to enable such new trustee or successor to execute, perform and fulfill the powers, duties and purposes of this trust, by force of this indenture, without any further assurance or conveyance, so far as such effect may be lawful; nevertheless, the trustee resigning or being removed shall immediately execute all such con-

veyances, or assurances, and other instruments, as may be fit and expedient for the purpose of assuring the legal estate in the premises to the new trustee or successor so appointed.

In case of a vacancy being temporarily filled by appointment by the president of the railroad company under the foregoing provision in that behalf, it shall be competent for any court of equitable powers, having jurisdiction in the premises, upon the application of any of the bondholders, upon due notice to the railroad company, and for cause to be shown, to annul such appointment and appoint a trustee in place of the trustee so appointed, to hold the trust for the like term as such trustee would hold the same under the president's appointment, but no longer.

And it is further declared and agreed that whenever, and as often as, any contingency shall arise, in which a meeting of the bondholders shall be necessary or expedient, it shall be the duty of the trustee, or of the president of the railroad company, on the written request of the holders of not less, in the aggregate, than one sixth in amount of said bonds then outstanding, and stating therein the purpose thereof, to call a meeting of the holders of all the then outstanding
300 bonds secured hereby, to be held in the city of New York, by advertisement to be published daily for at least six successive weeks in two newspapers printed and published in said city, and of good circulation in the business community thereof; and in default of such meeting being called by the trustee or by the president of the railroad company, within thirty days after request as aforesaid, it shall be competent for the holders of not less, in the aggregate, than one-sixth in amount of said bonds, then outstanding, to call such meeting in the manner aforesaid. And at any such meeting so called, the bondholders shall be competent to exercise, in person or by proxy, all the powers and authorities conferred upon them by this indenture: Provided, that the holders of a majority in interest of the outstanding bonds, in person or by proxy, shall be required to constitute a quorum at any such meeting; and provided further, that any vote of such meeting affecting, or intended to affect, any person or corporation, including the parties hereto, or their successors, may, by such person or corporation to be affected, be required to be authenticated under the hands and seals of the persons so voting.

Covenant for further assurance.

Article XVII. The railroad company hereby covenants and agrees to and with the trustee that it, the railroad company, shall and will, from time to time, and at all times hereafter, upon the reasonable request of the trustee, make, execute, acknowledge and deliver all such further deeds, conveyances and assurances in the law, for the better assuring to the trustee, upon the trusts, and for the purposes herein expressed or intended, the said railways and the estates, rights, titles and interests of the railroad company therein and thereto, with the equipment and appurtenances, and all other rights, interests, lands, premises, real estate, chattels real, property and effects, hereby mortgaged or conveyed in trust, or intended so
301 to be, and all property, which may be purchased or acquired by the use of the bonds, hereby secured, or of the proceeds thereof, and all other property and things whatsoever, which may become subject to this indenture; and all franchises now held, or that shall be hereafter acquired, relating thereto, including the franchise to be a corporation, as by the trustee, or by its counsel, shall be reasonably devised, advised or required.

Article XVIII. If the railroad company shall well and truly pay the sums of money herein required to be by it paid, and all interest thereon, at the times and in the manner herein specified, and shall well and truly keep, perform and observe all the agreements and things herein agreed and required to be kept, performed and observed by it, according to the true intent and meaning of this indenture, then, and in that case, the estate, right, title and interest of the trustee, and of its successors in the trust hereby created, in and to the property, rights, franchises, lands and premises, hereby granted and conveyed, shall cease and determine, and this indenture shall become void; otherwise the same shall be and remain in full force and virtue. And whenever the said bonds hereby secured shall be fully paid, principal and interest, this indenture shall be discharged by the said trustee or its successor, by appropriate instrument or instruments under seal, duly executed and acknowledged.

Discharge of mortgage.

Marginal notes shall not affect text.

Article XIX. It is expressly declared and agreed by and between the parties hereto, that the marginal notes to and upon this indenture are for convenience only, and shall not affect the interpretation of the text.

In witness whereof, the party of the first part has caused this indenture to be signed by its president or vice-president, and its corporate seal to be hereto affixed and attested by its secretary or assistant secretary; and the said party of
302 the second part to evidence its acceptance of the trusts by this indenture created, has caused this indenture to be signed by its president or vice-president, and its corporate seal to be hereto affixed and attested by its secretary or assistant secretary, in duplicate originals, the day and year first hereinbefore written.

CHICAGO AND NORTHERN PACIFIC RAILROAD COMPANY,
By HENRY S. HAWLEY,
President.

{Corporate Seal Chicago and Northern Pacific Railroad Company.}

Attest: HENRY S. BOUTELL, *Secretary.*

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

[Corporate Seal Farmers' Loan and Trust Company.]

Attest: E. S. MARSTON, *Secretary.*

Sealed and delivered in the presence of—
D. S. WEGG,
KEMPER K. KNAPP,
As to the Chicago and Northern Pacific Railroad Company, and
C. R. LEAKE,
A. L. BANISTER,
As to the Farmers' Loan and Trust Company.

303 STATE OF ILLINOIS, } ss:
Cook County, }

I, Kemper K. Knapp, a notary public in and for Cook county, in the State of Illinois, do hereby certify that Henry S. Hawley and Henry S. Boutell, personally known to me to be the president and secretary, respectively, of the Chicago and Northern Pacific Railroad Company, appeared before me this day in person and acknowledged that they executed the foregoing instrument for and on behalf of said Chicago and Northern Pacific Railroad Company, as the free and voluntary act of said railroad company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21st day of April, A. D. 1890.

[Notarial Seal Kemper K. Knapp, Cook County, Ills.]

KEMPER K. KNAPP,
Notary Public.

304 STATE OF NEW YORK, } ss:
City and County of New York, }

I, Charles A. Searls, a notary public in and for the city and county of New York, in the State of New York, do hereby certify that Rosewell G. Rolston and Edwin S. Marston, personally known to me to be the president and secretary, respectively, of the Farmers' Loan and Trust Company, appeared before me this day in person and acknowledged that they executed the foregoing instrument for and on behalf of said The Farmers' Loan and Trust Company, as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 9th day of May, A. D. 1890.

[Notarial Seal Charles A. Searls, New York.]

C. A. SEARLS,
Notary Public, Westchester County.

Certificate filed in N. Y. county.

305 STATE OF NEW YORK, } ss:
City and County of New York, }

I, Edward F. Reilly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that C. A. Searls has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Westchester, with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court and county, the 9th day of May, 1890.

[Seal of Supreme Court, City and County of New York.]

EDWARD F. REILLY, *Clerk.*

306 Mr. KNIGHT: We offer in evidence a certified copy of a mortgage made on the 1st day of May, 1889, between the Lake Street Elevated Railroad Company, party of the first part, and the Farmers' Loan & Trust Company of the City of New York, a corporation under the laws of New York, party of the second part, recorded in the recorder's office of Cook county, in Book 2466 of Records, page 566, to secure an issue of three million dollars of bonds.

(Said last-mentioned document was thereupon read in evidence by counsel for complainant and is in the words and figures following, to wit:)

"*Mortgage of the Lake Street Elevated Railway Company of Chicago.*

This indenture, made this first day of May, in the year one thousand eight hundred and eighty-nine, between the Lake Street Elevated Railway Company, an Illinois corporation, party of the first part, and the Farmers' Loan & Trust Company, a New York corporation, party of the second part, witnesseth:

Whereas, the party of the first part is a railroad corporation duly organized and existing under and by virtue of the laws of the State of Illinois,

And whereas, it has become necessary for the party of the first part to borrow the sum of three million dollars ($3,000,000) for the purpose of completing and equipping its railroad, and for its other lawful purposes;

307 And whereas, at a meeting of the board of directors of the party of the first part, held in the city of Chicago on the 22nd day of April, one thousand eight hundred and eighty-nine, resolutions were duly adopted, of which the following is a copy:

Resolved, That it has become necessary for this corporation to borrow money for the purpose of completing and equipping its railroad, and for its other lawful purposes, and it is determined that to procure such money this corporation will execute under its corporation seal and the signature of its president and treasurer, and attested by its secretary, bonds of the denomination of one thousand dollars each, to be numbered consecutively, and to amount in the aggregate to the sum of three million of dollars ($3,000,000), and to bear date May first, A. D. 1889, and to be payable in forty (40) years from the first day of January, A. D. 1889, with interest at the rate of six per centum per annum, payable semi-annually from said last-mentioned day, at its agency in the city of New York with coupons attached to each bond in the usual form, signed by the treasurer, and numbered to correspond respectively with each bond. Both principal and interest to be paid in gold coin, lawful money of the United States of America.

'Resolved, That for the purpose of securing the payment of the said bonds, and the interest that shall accrue thereon, this corporation will execute a mortgage under its corporate seal and the hands of its president and treasurer, and attested by its

308 secretary to the Farmers' Loan and Trust Co., a New York corporation, bearing even date with said bonds, and with like conditions, upon all the railroads of said company, constructed and to be constructed and upon all its real estate, rights of way, tracks, rails, depots, buildings, structures, erections, fixtures, locomotives, engines, tenders, cars, shops, tools and machinery of all kinds, whether now owned or possessed or to be hereafter acquired by it, and upon the franchises, incomes, earnings and profits, and all other corporate property, rights and privileges of the said rail-

road company, whether already acquired or to be hereafter acquired by it; which said mortgage shall be in the usual form, with such clauses and provisions as the executive officers of the mortgagor and mortgagee may approve, and conditioned to secure to the person or persons who may purchase or who may from time to time be the holders of said bonds, the payment thereof, with the interest which shall accrue thereon when and as the same shall become due and payable.'

And whereas, the party of the first part, to secure the payment of the said sum, has executed under its corporate seal and the hands of its president and treasurer, and attested by its secretary the said bonds, bearing even date herewith, which said bonds are in tenor and effect as follows:

No. —. $—.

UNITED STATES OF AMERICA, *State of Illinois.*

309 Lake Street Elevated Railway Company of Chicago.

Know all men by these presents, that the Lake Street Elevated Railway Company, of Chicago, is indebted to the Farmers' Loan and Trust Company, or bearer, in the just and full sum of one thousand (1,000) dollars to be paid to the bearer hereof at its agency in the city of New York on the first day of January, A. D. one thousand nine hundred and twenty-nine, in lawful money of the United States of America, with interest at the rate of six per centum per annum, payable semi annually from the first day of January, one thousand eight hundred and eighty nine, free from all taxes imposed by the Government of the United States of America, at the said agency in the city of New York upon presentation and surrender of the coupons hereto attached, after they shall have severally become due and payable. And the Lake Street Elevated Railway Company does hereby promise and agree to pay the said sum of money with the interest thereon, to the said registered holder or the bearer hereof, and thereunto binds itself firmly by these presents. This bond is one of a series of bonds of like tenor and date, amounting in all to the sum of three million (3,000,000) of dollars (in bonds of one thousand dollars each), the payment of which bonds is secured by a first mortgage of said railway company to the Farmers' Loan and Trust Company, as trustee for the owners or holders thereof, bearing even date herewith and being a first mortgage upon all of the railroads of said company, constructed and to be con-
310 structed, and upon all its real estate, rights of way, tracks, rails, depots, buildings, structures, erections, fixtures, locomotives, engines, tenders, cars, shops, tools and machinery of all kinds, whether now owned or possessed or to be hereafter acquired by it and upon the franchises, incomes, earnings and profits, and all other corporate rights and privileges of the said railroad company, whether already acquired or to be hereafter acquired by it. The said mortgage also contains a provision that, in case of default in the payment of the said coupons, or any of them, at the time and

place herein specified, for the period of thirty days after the same or any part thereof shall become due and payable, and after a written demand thereof, the said trustee shall have the right to commence an action to foreclose said mortgage and recover the amount which shall be due and unpaid upon said bonds, at the time of a rendition of a judgment in said action.

In testimony whereof, the said railway company has caused this bond to be signed by its president and treasurer, and attested by its secretary and its corporate seal to be hereunto affixed, this first day of May, in the year of our Lord one thousand eight hundred and eighty-nine.

LAKE STREET ELEVATED
RAILWAY COMPANY,
By —— ——, *President.*
—— ——, *Treasurer.*
—— ——, *Secretary.*

311 The Farmers' Loan and Trust Company hereby certifies that this bond is one of the bonds secured by the mortgage of the Lake Street Elevated Railway Company within referred to.

THE FARMERS' LOAN & TRUST CO., *Trustee,*
By —— ——, *Vice-Pres.*

312 And whereas the party of the first part is about to issue and negotiate the said bonds for the purposes aforesaid:

Now therefore, this indenture witnesseth, that the party of the first part, in order to secure the payment of the said bonds and the interest thereon, and in consideration of one dollar to it in hand paid by the party of the second part, does hereby, grant, bargain, sell and convey unto the party of the second part, to their successors in the trust hereby created, and to their assigns the railroad of the party of the first part, beginning at or about Canal street in the city of Chicago, in the county of Cook, in the State of Illinois, and running thence west a distance of about ten miles; as well that part of said railroad not constructed as the part thereof which shall hereafter be constructed, and all and singular the rights of way, tracks, rails, depots, buildings, structures, erections, fixtures, locomotives, engines, tenders, cars, shops, tools and machinery and appurtenances, thereunto belonging or in anywise appertaining, whether now owned or possessed, or hereafter to be acquired by the party of the first part; and upon the franchise, income earnings and profits, and all other corporate rights and privileges of the said railroad company, whether already acquired or to be hereafter acquired by it.

To have and to hold the same, and every part and parcel thereof, to the party of the second part and their successors in trust,
313 and as security for the payment of said sum of three million ($3,000,000) of dollars and the interest thereon, according to the tenor and effect of said bonds. And it is expressly declared that the said bonds shall be regarded as equally secured by this instrument.

Provided, always, that these presents are upon the express condition that if the party of the first part, or its assigns, shall well and truly pay or cause to be paid to the holders of the said bonds, when and as the same shall become due and payable, the principal and interest money secured to be paid thereby, then these presents shall cease and shall become null and void, and the estate hereby granted and conveyed shall cease and determine.

But if default shall be made in the payment of the principal or interest money mentioned in the condition of said bonds, or either of them, or any part thereof, according to the tenor, effect, true intent and meaning of said bonds, then, and in that case, the party of the second part and their successors, are hereby authorized and empowered, at the request of the holder of either of said bonds, to enter into and upon, and take and hold possession of all and singular the premises, estate, franchises, rights, privileges and property hereby granted and conveyed or intended so to be; and in person, or by one or more agents, take, collect and receive the income, tolls, earnings and profits thereof, and apply such income, tolls, earn-
314 ings and profits, first to the payment of all taxes and assessments which shall be levied or assessed thereon, and all necessary repairs on said property, and their expenses, costs, charges and counsel fees in the premises, including a reasonable compensation for the services; and next to the payment of the principal and interest of the said bonds as the same may be or may become due and payable; and to sell the said premises, estate, franchises, privileges and property, or any part thereof, and all right, benefit and equity of redemption of the party of the first part therein, at public auction, as by law provided. And as the attorney of the party of the first part, by these presents duly conditioned and appointed for that purpose, to make, execute and deliver to the purchaser or purchasers, his or their heirs, successors and assigns, all such deeds, grants, releases, conveyances, and bills of sale as shall be necessary or proper to vest in such purchaser or purchasers, all the estate, right, title and interest of the party of the first part, of, in and to the same and every part and parcel thereof; and out of the proceeds of such sale, after deducting the reasonable expenses, costs, charges and counsel fees of the party of the second part, or their successors in the premises, and a reasonable compensation for their services herein to pay, satisfy and discharge the principal and interest then due and unpaid upon the said bonds, rendering the surplus (if any there shall be) to the party of the first part or its assigns; and the sale so made shall be a perpetual bar
315 against the party of the first part, and all persons claiming or to claim the same, or any part thereof, by, through or under it. The remedies herein provided for the enforcement of the mortgage security by entry and sale are cumulative and in addition to the right of foreclosure which the trustee may exercise on proper occasion by bill in equity in any court of competent jurisdiction.

And it is expressly agreed, by and between the parties to these presents, that the party of the second part, or their successors, shall be liable and accountable only for the exercise of reasonable dili-

gence in their management in the premises, and not for the act of any agent or agents who may be by them from time to time appointed, under or by virtue of these presents, or any omission to file this instrument or any copy thereof as a chattel mortgage or to record the same, nor shall it be any part of the duty of the trustee to do any act or protect or enforce the rights of the holders of any of the bonds secured hereby, except on request of such bondholders, or some of them, accompanied with proper indemnity to its satisfaction; and the trustee shall be entitled to all its expenses and disbursements incurred by it at any time in the execution of its trust, and to a proper compensation for any services which it may perform as such.

And the party of the first part hereby covenants and agrees with the party of the second part and their successors, that it will
316 at any time, upon the demand of the party of the second part or their successors, and at its own cost and expense, make, execute and deliver all of such further instruments in writing, and do all such further acts and things as shall or may be necessary and proper, and as the party of the second part, their successor or successors, shall reasonably require to carry out or effectuate the objects of these presents, and to perfect or make more valid and complete the lien and security hereby intended to be created, and to embrace and mortgage more accurately or perfectly the premises, property, estate, franchises, rights and privileges as aforesaid.

In witness whereof, the party of the first part has caused its corporate seal to be affixed hereto, and the same to be signed by its president and treasurer, and attested by its secretary, the day and year first above written.

{ Lake Street Elevated Railway Company, }
{ Chicago, Ill., 1888. }

THE LAKE STREET ELEVATED RAILWAY COMPANY.
P. H. RICE, *President.*
M. C. McDONALD, *Treasurer.*
O. W. BRUNER, *Secretary.*

STATE OF ILLINOIS, }
Cook Co., City of Chicago, } ss:

On this 23rd day of May, A. D. 1889, before me, the subscribed, personally appeared P. H. Rice, who, being by me duly sworn, deposes and says that he is the president of the Lake Street Elevated Railway Company of Chicago; and at the same time personally appeared before me O. W. Bruner, who, being duly sworn, deposes
317 and says that he is the secretary of the Lake Street Elevated Railway Company of Chicago; and also at the same time appeared before me M. C. McDonald, who, being duly sworn, deposes and says that he is the treasurer of the Lake Street Elevated Railway Company of Chicago, and they each depose and each for himself deposed that he is acquainted with the corporate seal of said

railway company; that the seal annexed to the foregoing instrument is such corporate seal; that the same was annexed thereto by the authority of the board of directors of said railway company, and that they signed the same by like authority.

[Julius Stern, Notary Public, Cook Co., Ills.]

JULIUS STERN,
Notary Public, Cook County, Illinois.

STATE OF ILLINOIS, }
Cook County, } ss:

I, Henry Wulff, clerk of the county court of Cook county, the same being a court of record, do hereby certify that Julius Stern, Esq., whose name is subscribed to the annexed jurat, was, at the time of signing the same, a notary public in Cook county, duly commissioned, sworn, and acting as such, and authorized to administer oaths; that I am well acquainted with his handwriting, and I verily believe that the signature to the said jurat is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chicago, in the said county, this 24th day of May, 1889.

[County Court, Cook County, Illinois, Organized 1849.]

318 HENRY WULFF, *Clerk.*

The Farmers' Loan and Trust Company hereby accept the foregoing trust this third day of June, 1889.

[Farmers' Loan and Trust Company, N. York.]

THE FARMERS' LOAN & TRUST COMPANY,
By *K. G.* ROLSTON, *President.*

Attest: W. K. LEUPP, *Sec'y.*

No. 1,153,615.

Filed for record Sept. 10, A. D. 1889, at 9 a. m.
WILEY S. SCRIBNER, *Recorder.*

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Samuel B. Chase, recorder of deeds and keeper of the records in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the tenth day of September, A. D. 1889, as document No. 1,153,615, and recorded in Book 2466 of Records, at page 556.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this second day of May, A. D. 1896.

[SEAL.] SAM'L B. CHASE, *Recorder.*"

Mr. KNIGHT: We offer in evidence certified copy of the release deed of the last-named mortgage, dated June 16th, 1893.

319 (Said last-mentioned document was thereupon read in evidence by counsel for complainant, and is in the words and figures following, to wit:)

"This indenture, made the 16th day of June in the year one thousand eight hundred and ninety-three, between the Farmers' Loan and Trust Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York and the American Trust and Savings Bank of Chicago, in the State of Illinois, a corporation created and existing under the laws of the State of Illinois, parties of the first part, and the Lake Street Elevated Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, party of the second part, witnesseth:

Whereas the said party of the second part for the purpose of securing the payment of a series of bonds to an amount in the aggregate of three million dollars ($3,000,000) did make, execute and deliver to the said parties of the first part, a certain indenture of mortgage or deed of trust dated the twenty-second day of October, in the year one thousand eight hundred and eighty-nine, and recorded in the recorder's office for the county of Cook in the State of Illinois, in Book 2768 of Records, at page 153, and as document No. 1,179,194, on the first day of November, 1889.

Now therefore the said parties of the first part, do hereby severally certify that the said mortgage or deed of trust has been satisfied and the bonds secured by the same have been cancelled and the
320 said parties of the first part do hereby severally consent that the said mortgage of deed of trust be discharged of record.

And the said parties of the first part in consideration of the sum of one dollar to each of them in hand paid by said party of the second part, have remised, released and quitclaim- and by these presents do remise, release and quitclaim unto the said party of the second part and to its successors and assigns forever all the property and premises real and personal of every sort and description in the said mortgage or deed of trust mentioned and described (reference being made to the said mortgage or deed of trust for fuller description) together with all appurtenances thereof and all the estate, right, title and interest, property, possession, claim and demand as well at law as in equity of the said parties of the first part of, in and to the said property and premises and every part and parcel thereof with the appurtenances.

To have and to hold the same unto the said party of the second part, its successors and assigns forever free and discharged from any lien claim or interest whatsoever of the said parties of the first part or either of them in the same or any part thereof under and by virtue of said mortgage or deed or trust.

In witness whereof the said parties of the first part have respectively caused their corporate seals to be hereunto affixed and these

presents to be signed by their respective presidents and duly
321 attested the day and date first above written.

[Farmers' Loan and Trust Company, N. York.]

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest: E. S. MARSTON, *Secretary.*

[Seal the American Trust and Savings Bank, Chicago.]

THE AMERICAN TRUST AND SAVINGS BANK,
By FRANKLIN H. HEAD, *Vice-President.*

Attest: J. R. CHAPMAN, *Secretary.*

STATE OF NEW YORK, } ss:
City and County of New York, }

I, John McClure, a notary public in the State of New York, duly appointed to reside and residing in the city and county of New York, do hereby certify that on this 17th day of June, one thousand eight hundred and ninety-three, before me personally appeared Rosewell G. Rolston, personally known to me to be the individual who subscribed the foregoing instrument for and in behalf of the Farmers' Loan and Trust Company, who, being by me duly sworn, did depose and say that he resides at Babylon, Suffolk county, New York, and is the president of the Farmers' Loan and Trust Company, the corporation mentioned and described in the foregoing instrument; that he knew the corporate seal of said instrument, and the seal affixed to the foregoing instrument is such corporate seal and was affixed by authority of the board of directors of said company, and that he signed his name to said instrument by like authority as president of said corporation; and the said Rosewell G. Rolston acknowledged said instrument to be the act and
322 deed of said corporation, and that the same was executed by said corporation freely and voluntarily for the purpose as therein mentioned.

And I further certify that the foregoing instrument is executed and acknowledged according to the laws of the State of New York.

In witness whereof I have hereunto set my hand and official seal, in the city and county of New York aforesaid, this 17 day of June, one thousand eight hundred and ninety-three.

[John McClure, Notary Public, New York.]

JOHN McCLURE,
Notary Public, New York County.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Arthur Woodcock, a notary public in and for said county, in the State aforesaid, do hereby certify that Franklin H. Head, personally known to me to be the same person whose name is sub-

scribed to the foregoing instrument as vice-president of the American Trust & Savings bank, acting in the absence of the president, and personally known to me to — the vice-president of said The American Trust & Savings bank, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such vice-president and as the free and voluntary act of said The American Trust and Savings bank for the uses and purposes therein set forth.

323 And I do hereby also certify that J. R. Chapman, personally known to me to be the same person whose name is subscribed to the foregoing instrument as secretary of the said The American Trust and Savings bank and personally known to me to be the secretary of said The American Trust & Savings bank, appeared before me this day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate seal of said The American Trust & Savings bank as his free and voluntary act as such secretary and as the free and voluntary act of said The American Trust and Savings bank for the uses and purposes herein set forth.

Witness my hand and notarial seal this 21st day of June, A. D. 1893.

{ Arthur Woodcock, Notary Public, Chicago, Cook Co., Illinois. }

ARTHUR WOODCOCK,
Notary Public, Cook County, Ill.

No. 1,889,795.

Filed for record June 21, 1893, at 11 a. m.
SAM'L B. CHASE, *Recorder.*

STATE OF ILLINOIS, } *ss*:
County of Cook, }

I, Samuel B. Chase, recorder of deeds and keeper of the records in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the twenty-first day of June,
324 A. D. 1893, as document No. 1,889,795, and recorded in Book 4228 of Records, at page 540.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this first day of May, A. D. 1896.
SAM'L B. CHASE, *Recorder.*"

Mr. KNIGHT: We offer in evidence the articles of incorporation of the Lake Street Elevated Railroad Company, dated the 23rd day of August, 1892, and recorded in the recorder's office of Cook county, Illinois, August 24th, 1892, in Book 2 of Corporations, at page 502.

Mr. BURRY: Objected to. They allege the corporation, and we admit the corporation as alleged.

The COURT: What is the use of making proof of that fact?

Mr. KNIGHT: We want the record to show the full incorporation;

that it is incorporated under the general railroad laws of the State of Illinois.

Mr. BURRY: They cannot make it any fuller than the bill states. It is incompetent.

The COURT: If they want to encumber the record, I suppose they ought to be allowed to do it.

(Said last-mentioned document was thereupon read in evidence by counsel for complainant and is in the words and figures following, to wit:)

"Know all men by these presents: That we the undersigned propose to form a corporation for the purpose of constructing, maintaining and operating a railway in the State of Illinois, and
325 in pursuance of an act of the legislature of said State entitled 'An act to provide for the incorporation of associations, that may organize for the purpose of constructing railways, maintaining and operating the same for prescribing and defining the duties and limiting the powers of such corporations when so organized,' approved and in force March 1st, 1872, do hereby make, adopt and sign articles of incorporation as follows, to wit:

Article I.

The name of such corporation shall be 'The Lake Street Elevated Railroad Company.'

Article II.

The place- from and to which it is intended to construct the proposed line or lines of railroad are as follows:

From a point at or near the east end of Lake street in the city of Chicago, county of Cook and State of Illinois, in a westerly direction upon or near said Lake street and the extension thereof to the west line of said Cook county, together with such feeders, loops, switches and branch lines from such point or points as said main line to such point or points in said Cook county as the board of directors of said company may deem advisable.

Article III.

The principal business office of said company is to be established and maintained at the city of Chicago, county of Cook and State of Illinois.

326 Article IV.

The said corporation shall commence on the day of the date of the filing for record of these articles in the office of the recorder of Cook county, State of Illinois, and is to continue for the period of fifty (50) years from that date.

Article V.

Michael C. McDonald, Patrick H. Rice, Hiram P. Thompson, Edwin Walker and William H. Fitzgerald, all residents of the city

of Chicago, county of Cook and State of Illinois, are the persons forming this association for incorporation.

Article VI.

The capital stock of the corporation is to be five million dollars ($5,000,000.00).

Article VII.

Patrick H. Rice, Otis W. Bruner, Michael C. McDonald, Harry L. Holland, Hiram P. Thompson, Oscar M. Brady, Thomas P. Hicks, Edwin Walker and William H. Fitzgerald, shall be the first board of directors of said corporation and the government and management of said corporation shall be vested in its board of directors.

Article VIII.

The capital stock of said corporation shall be divided into fifty thousand (50,000) shares of one hundred dollars ($100.00) each.

327 In witness whereof the said several persons above named, forming this association, have hereunto set their hands and seals this 17th day of August, A. D. 1892.

MICHAEL C. McDONALD. [SEAL.]
P. H. RICE. [SEAL.]
HIRAM P. THOMPSON. [SEAL.]
EDWIN WALKER. [SEAL.]
WILLIAM H. FITZGERALD. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Theodore Lewandowski, a notary public in and for said county, in the State aforesaid, do hereby certify that Michael C. McDonald, Patrick H. Rice, Hiram P. Thompson, Edwin Walker, and William H. Fitzgerald, to me personally known to be the same persons whose names are subscribed to the foregoing statement, appeared before me in person this seventeenth day of August, A. D. 1892, and acknowledged that they signed said statement for the uses and purposes therein set forth.

[Theodore Lewandowski, Notary Public, Cook Co., Ills.]

THEODORE LEWANDOWSKI,
Notary Public.

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF SECRETARY.

I, Isaac N. Pearson, secretary of state of the State of Illinois, do hereby certify that the foregoing articles of incorporation of the Lake Street Elevated Railroad Company were filed for rec-
328 ord in the office of the secretary of state of the State of Illinois on the 23rd day of August, A. D. 1892, at 9.50 o'clock

a. m., and duly recorded in Book No. 11 of Railroad Records, at page 328.

In witness whereof I hereto set my hand and affix the great seal of state, at the city of Springfield, this 23rd day of August, A. D. 1892.

[Seal of the State of Illinois, Aug. 26th, 1818.]

I. N. PEARSON,
Secretary of State.

No. 1,722,154.

Filed for record Aug. 24, 1892, at 1 p. m.
JOHN STEPHENS, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Samuel B. Chase, recorder of deeds and keeper of the records in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the twenty-fourth day of August, A. D. 1892, as document No. 1,722,154, and recorded in Book 2 of Corps., at page 502.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this twenty-third day of March, A. D. 1896.

SAM'L B. CHASE, *Recorder.*"

Mr. KNIGHT: We offer a certificate of the increase of the capital stock of the Lake Street Elevated Railroad Company, recorded
329 at Book 2 of Corporations, at page 525, recorder's office of Cook county, Illinois.

Mr. BURRY: The same objection.

(Said last-mentioned document was thereupon read in evidence by counsel for complainant, and is in the words and figures following, to wit:)

"STATE OF ILLINOIS, } ss:
County of Cook, }

We hereby certify that at a special meeting of the stockholders of the Lake Street Elevated Railroad Company, held at the office of the company, room No. 25, Marine building, 154 & 156 Lake street, in the city of Chicago, Illinois, pursuant to notice given in the manner required by law, the following question was submitted to the stockholders:

'Resolved, That the capital stock of the Lake Street Elevated Railroad Company be, and the same is hereby, increased from five million dollars ($5,000,000) to ten million dollars ($10,000,000), such increase to consist of fifty thousand (50,000) shares of the par value of one hundred dollars ($100.00) each.'

Which said resolution was adopted by the stockholders, two-thirds

of the votes represented by the whole stock of the corporation voting therefor.

In witness whereof we have hereunto set our hands and annexed the seal of the corporation this 6th day of April, A. D. 1893.

{ Corporate Seal the Lake Street Elevated Railroad Company, Chicago, Ill. }

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By JOHN A. ROCHE, *President.*

Attest: O. W. BRUNER, *Secretary.*

330 STATE OF ILLINOIS, } *County of Cook,* } ss:

John A. Roche, being first duly sworn, deposes and says that he has read the foregoing certificate subscribed by him and knows the contents thereof, and that the same is true in substance and in fact, and that he is president of said corporation.

JOHN A. ROCHE, *President.*

Subscribed and sworn to before me this 6th day of April, A. D. 1893.

[Alice G. Nelson, Notarial Seal, Cook County, Ill.]

ALICE G. NELSON,
Notary Public.

No. 1,865,889.

Filed for record May 10, 1893, at 4 p. m.

SAM'L B. CHASE, *Recorder.*

STATE OF ILLINOIS, } *County of Cook,* } ss:

I, Samuel B. Chase, recorder of deeds and keeper of the records in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the tenth day of May, A. D. 1893, as document No. 1,865,889, and recorded in Book 2 of Corps., at page 525.

In testimony whereof I have hereunto set my hand and
331 affixed my official seal, at Chicago, this twenty-third day of March, A. D. 1896.

[SEAL.] SAM'L B. CHASE, *Recorder.*"

Mr. KNIGHT: I don't think it is necessary to offer the railroad mortgage. I think the answer admits it as laid in the bill.

Mr. BURRY: Yes; it does.

Mr. KNIGHT: We will offer the mortgage made by the Lake Street Elevated Railroad Company to the American Trust and Savings bank and the Farmers' Loan and Trust Company, recorded in the recorder's office of Cook county, Illinois, in Book 4256, at page 230.

Mr. MAYER: That is the trust deed involved in this case?

Mr. BURRY: That is objected to. It is admitted by the answer.

(The last-mentioned mortgage so offered was thereupon read in evidence by counsel for complainant and was the same mortgage, a copy of which is exhibited with the bill of complaint in this cause and which is admitted by the answer, and to be considered as though inserted herein in full.)

332 D. H. LOUDERBACK, a witness called on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Knight, and testified as follows:

Q. State your name.

A. Delancy H. Louderback.

Q. What is your business?

A. Surface and elevated railroads.

Q. What relation do you bear to the Lake Street Elevated Railroad Company?

A. President of the company.

Q. The complainant in this suit?

A. Yes, sir.

Q. How long have you been such president, Mr. Louderback?

A. Since the latter part of 1894.

Q. What change took place in the Lake Street Elevated Railroad Company at that time, when you were made president, Mr. Louderback?

A. In what respect?

Q. About the management and control of the road.

A. There was an entire change in the management of the road; the old officers retired and new ones were elected.

Q. Who was president of the road prior to your assuming that position?

A. John A. Roche.

Q. You went in in July?

A. No; I didn't go in as president until some time later; we took control of the road July 2nd, 1894; Mr. Roche remained as president until the latter part of 1894, and then resigned, and I took his office.

Q. In October, wasn't it?

A. I think around that time.

Q. You had the active management of the road?

333 A. Yes, sir; from July 2nd.

Mr. HERRICK: You were treasurer from July 2nd?

A. Yes, sir; I was treasurer up to the time I was elected president.

Mr. KNIGHT: Do you know The Farmers' Loan & Trust Company, the defendant in this case?

A. Through our business connections, yes, sir.

Q. Do you know William Burry?

A. Yes, sir.

Q. Has the company had any official connection with Mr. Burry?

A. Yes, sir; we were advised by the Farmers' Loan and Trust Company in August, 1894, that under the trust deed——

Mr. BURRY: Was it in writing?

A. In writing.

Mr. BURRY: I object.

Mr. KNIGHT: Is this a copy of the writing?

A. Yes, sir; that is the letter appointing him as agent for the Farmers' Loan and Trust Company in connection with the Lake Street Elevated Railroad Company, and which we recognized.

Mr. KNIGHT: I offer in evidence the letter dated August 7th, 1894.

(Said letter was thereupon read in evidence by counsel for complainant, and is in the words and figures following, to wit:)

"NEW YORK, *August* 7, 1894.

Lake Street Elevated R. R. Co., Chicago, Ill., John A. Roche, Esq., president.

DEAR SIR: We have decided to appoint Mr. William Burry, of 184 La Salle street, Chicago, Illinois, as our agent under the
334 authority given to us in the mortgage dated the 7th day of April, 1893, made by your company to this company as trustee. Mr. Burry will no doubt present to you in a day or two the letter which we have just forwarded to him, advising him of his appointment. Please do what is needful in the matter, and oblige,

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By E. S. MARSTON, *Sec'y.*"

A. On receipt of that letter we held a directors' meeting and ratified the appointment of Mr. Burry as agent of the company.

Mr. BURRY: Wait a moment. I move to strike that out.

The COURT: Strike it out.

Mr. KNIGHT: Mr. Louderback, is this a copy of the records of the company showing the action taken upon that letter?

A. Yes, sir.

(Said last-mentioned document was thereupon offered and read in evidence by the counsel for complainant, and is in the words and figures as follows, to wit:)

"CHICAGO, *August 11th*, 1894.

At a meeting of the board of directors of the Lake Street Elevated Railroad Company, duly called and held at the office of the treasurer, 529 The Rookery, this 11th day of August, 1894, there were present Directors Louderback, Furbeck, Sturges, Parsons, and Roche.

Mr. Parsons in the chair.

The following letter was presented by the treasurer:

335 NEW YORK, *August 7th*, 1894.

Lake Street Elevated Railroad Company, Chicago, Ill.; John A. Roche, Esq., president.

DEAR SIR: We have decided to appoint Mr. William Burry, of 184 La Salle street, Chicago, Illinois, as our agent under the authority given to us in the mortgage dated the 7th day of April, 1893, made by your company to this company as trustee. Mr. Burry will no doubt present to you in a day or two the letter which we have just forwarded to him advising him of his appointment. Please do what is needful in the matter, and oblige,

Yours very truly, THE FARMERS' LOAN & TRUST COMPANY,

(Signed) By E. S. MARSTON, *Sec'y.*

On motion of Mr. Furbeck, it was—

Resolved, That the letter dated August 7th, 1894, from the Farmers' Loan & Trust Company, one of the trustees under the mortgage of this company, whereby it appoints Mr. William Burry its agent under article II of said mortgage, be recorded in the minutes of this meeting, and the executive officers are hereby authorized and directed to furnish Mr. Burry all books, papers, and facilities required in the performance of his duty thereunder."

Q. Mr. Louderback, now, will you proceed to state what was done after this appointment of Mr. Burry as agent in regard to his
336 duties under the mortgage?

A. Mr. Burry visited our office at Lake and Rockwell streets and under my direction the then secretary of the company furnished him every voucher.

MR. BURRY: You must only testify to what you know—what you know of your own knowledge.

A. I know of my own knowledge, it being reported to me by my subordinate officers.

Objected to by counsel for defendant The Farmers' Loan & Trust Company.

THE COURT: Unless you were there you can't state it.

MR. KNIGHT: Did you have any conversation with Mr. Burry in reference to that matter afterwards?

A. Yes, sir; he came to my office and stated that he went through everything and found everything satisfactory, and, as far as he could see, the interests of the railroad were being conserved, and there was a very different management in charge to what there had been heretofore.

Q. What did he say with reference to having examined the papers which were directed to be turned over to him?

A. My recollection of what he said would not be good enough to state.

Q. State whether he had examined the papers which you were authorized to turn over to him.

A. Yes, sir.

Q. What further papers had you authorized to be turned over to him?

Objected to by counsel for defendant The Farmers' Loan and Trust Company.

The COURT: Yes; I think that is all; what papers he saw himself.

337 Mr. KNIGHT: What papers did you turn over?

Objected to by counsel for defendant The Farmers' Loan & Trust Company.

The COURT: Will you follow this up by the subordinate?

Mr. KNIGHT: We will prove every paper turned over.

The COURT: Then let him state.

To which ruling of the court counsel for defendant The Farmers' Loan & Trust Company then and there duly *accepted*.

A. We furnished him all the vouchers showing——

Mr. BURRY: That is not responsive to the question.

The COURT: The question is, what did you turn over to your subordinate for the purpose of being turned over to Mr. Burry?

A. I authorized my subordinate to furnish Mr. Burry every voucher appertaining to the expenditure of money received by us from the sale of certain bonds, which the two trustees had advanced us on account of purchases and expenditures.

Mr. KNIGHT: What bonds were those, Mr. Louderback?

A. They were bonds covering the purchases of the Humboldt Park right of way, and bonds on account of the right of way on the East Lake Street extension, and also for the Market Street extension, and for certain damages.

Q. What was the issue of bonds at the time when you took charge of the road under the mortgage, what number—6,500, wasn't it?

A. I couldn't answer that question positively.

Q. $6,500,000 when you took charge of the road?

A. About that.

Q. Now, this issue that Mr. Burry had charge of, what
338 were they, in addition to the original issue?

A. Yes, sir.

Q. How many bonds were there altogether?

A. As my recollection serves me, it was 855.

Q. Did you receive those bonds from the trustees?

A. We received them direct from the Farmers' Loan and Trust Company.

Mr. MAYER: They were $1,000 apiece, the bonds?

A. Yes, sir.

Mr. KNIGHT: And the vouchers which you submitted to Mr. Burry were vouchers showing the expenditure of money derived from the sale of eight hundred and some odd bonds, which you refer to?

A. Yes, sir.

Q. Did they refer at all to the prior issue of bonds, six and one-half million dollars?

A. No, sir.

Q. Where was Mr. Burry at the time these vouchers were submitted to him—where was the transaction had?

A. From my information, at Lake and Rockwell streets.

Mr. BURRY: I move to strike that out.

Mr. KNIGHT: Where was that?

A. That was then the chief——

The COURT: The objection is sustained.

Mr. KNIGHT: Where was the office of the company at the time Mr. Burry made the examination you have referred to?

A. Lake and Rockwell streets.

Q. In the city of Chicago?

A. Yes, sir.

Q. Illinois?

A. Yes, sir.

Q. Where was this conversation which you have made
339 reference to had?

A. At my office, 529 Rookery building.

Q. City of Chicago and State of Illinois?

A. Yes, sir.

Mr. HERRICK: About what date, Mr. Louderback?

A. I could not state that date without looking at the records.

Mr. KNIGHT: About what date?

A. It was in 1894.

Q. Mr. Louderback, I show you a document here and ask you whose name is signed to that.

A. William Burry.

Q. The William Burry referred to in the resolution and communication of the Farmers' Loan and Trust Company?

A. Yes, sir.

Q. We offer this in evidence, which I will read into the record to save copying.

Mr. BURRY: I object to that.

The COURT: There might be some question as to who made the payment; they may show it.

(Said last-mentioned document was thereupon read in evidence by counsel for complainant, and is in the words and figures following, to wit:)

Voucher No. 68, April, 1895.

"The Lake Street Elevated Railroad Company to William Burry, Chicago.

For services as agent for the trustees under the mortgage from August 11, 1895, to January 1, 1895, at $1,000.00 per year $388.88

Charge G. E., min. exp.

Examined and approved:
R. S. BUCHANAN, *Ass't Sec'y.*

340 Received May 1st, 1895, from the Lake Street Elevated Railroad Company three hundred eighty-eight and $\frac{88}{100}$ dollars, in full settlement of the above account.

WM. BURRY.

I certify the within account to be correct.

W. H. DOWNS."

Q. Was that paid by the Lake Street Elevated Railroad Company to him?

A. Yes, sir.

Q. Mr. Louderback, I show you another document. By whom was that signed?

A. William Burry.

Q. The same one who was appointed agent?

A. Yes, sir.

Q. In the communication referred to?

A. Yes, sir.

Mr. KNIGHT: I offer this in evidence.

(Said last-mentioned document was thereupon read in evidence by counsel for complainant, and is in the words and figures following, to wit:)

Voucher No. 47, July, 1895.

"The Lake Street Elevated Railroad Company to Wm. Burry, Chicago.

For services from January 1st to July 1st, 1895, as agent appointed under 2nd covenant of the mortgage, per bill. $500.00

General expense, mis. ex.

Examined and approved:
R. S. BUCHANAN, *Ass't Sec'y.*

Approved:
D. H. LOUDERBACK.

341 Received Aug. 15, 1895, from the Lake Street Elevated Railroad Company five hundred and no dollars in full settlement of the above account.

WM. BURRY.

I certify the within account to be correct.

W. H. DOWNS."

(Attached to said last-mentioned document was another document which counsel for complainant thereupon offered and read in evidence and which was in the words and figures following, to wit:)

"JULY 22ND, 1895.

Lake Street Elevated R'y Co. to William Burry, Dr.

For services from January 1st to July 1st, 1895, as agent appointed under the second covenant of the mortgage dated May 7, 1893, given by it to the American Trust & Savings bank and the Farmers' Loan & Trust Co..... $500.00

Received payment, —— ——.

Approved:
D. H. LOUDERBACK, *Pres't.*"

Q. I now show you another document, Mr. Louderback, and ask you by whom that was signed.
A. William Burry.
Q. The same party last referred to?
A. Yes, sir.

Mr. KNIGHT: We offer this in evidence.
(Said last-mentioned document was thereupon read in evidence by counsel for complainant and is in the words and figures following, to wit:)

342 Voucher No. 121, Oct., 1895.

"The Lake Street Elevated Railroad Company to William Burry, Chicago.

Oct. 31. For compensation as agent for trustees from July 1st to October 1st, 1895, as per bill of Oct. 28th, 1895, attached. $250

Charged gen. exp., mis. exp.

Approved:
D. H. LOUDERBACK, *President.*

Examined and approved:
R. S. BUCHANAN, *Sec'y.*

Received Nov. 18th, 1895, from the Lake Street Elevated Railroad Company two hundred fifty dollars in full settlement of the above account.

WM. BURRY.

I certify the within account to be correct.

W. M. D."

Also the bill attached, which is as follows:

"CHICAGO, *Oct. 28th*, 1895.

Lake Street Elevated R. R. Co. to William Burry, Dr.

For compensation as agent for trustees from July 1st to October 1st, 1895..... .... $250.00

Received payment, —— ——.

O. K.
KNIGHT & BROWN.

Approved:
D. H. LOUDERBACK, *Pres't.*"

343 Q. I will ask you by whom was this document signed which I now hand you.
A. The Farmers' Loan and Trust Company, by W. H. Leupp, second vice-president.
Q. Who is the letter from?
A. The same party.
Q. By whom was this document that I now hand you signed?
A. William Burry.
Q. Is the receipt attached to that document also signed by him?
A. Yes, sir.

(Said last-mentioned document and said last-mentioned receipt attached to said document were thereupon read in evidence by counsel for complainant and are respectively as follows:)

"CHICAGO, *January 7th*, 1896.

"Lake Street Elevated R. R. Co. to William Burry, Dr.

For services as agent for the trustees under the provisions of the mortgage, for the quarter ending December 31st, 1895..... $250.00

Received payment, WM. BURRY.

O K.
KNIGHT & BROWN.

Approved:
D. H. LOUDERBACK, *Pres't.*"

Voucher No. 17, Jan'y, 1896.

"The Lake Street Elevated Railroad Company to William Burry, Chicago.

For services rendered as agent for the quarter ending December 31st, 1895, as per bill Jan'y 13, attached..... $250.00

Charge G. E., misc. exp.

Approved:
D. H. LOUDERBACK, *Pres't.*

344 Examined and approved:
R. S. BUCHANAN, *Ass't Sec'y.*

Received, Jan'y 18, 1896, from the Lake Street Elevated Railroad Company two hundred fifty dollars in full settlement of the above account.

WM. BURRY.

I certify the within account to be correct.

W. M. D."

Mr. KNIGHT: I offer in evidence the document referred to in the previous question.

(Said last-mentioned document was thereupon read in evidence by counsel for complainant and is in the word- and figures following, to wit:)

"NEW YORK, *Oct.* 30, 1895.

"Lake Street Elevated R. R'd Co. to the Farmers' Loan and Trust Company, Dr.

Trustees' fees accepting deed of trust and certifying bonds Nos. 7476–7576 ..... $50.50

Rec'd payment, W. H. LEUPP.

Final 101 bonds.
1 bond not issued.
1 bond to come in December.

R. S. B."

(Counsel for complainant thereupon offered and read in evidence the voucher attached to said last-mentioned document; which said voucher was in the words and figures following, to wit:)

Voucher No. 29, Nov., 1895.

"The Lake Street Elevated Railroad Company to the Farmers' Loan and Trust Co., N. Y.

Nov. 21. For trustees fees for certifying bonds Nos.
345 7476–7576, inclusive, 101 bonds, at 50c. each..... ..... $50.50

Charge R. W. E., Lake St. ext.

Approved:
D. H. LOUDERBACK, *Pres't.*

Examined and approved:
R. S. BUCHANAN, *Ass't Sec'y.*

Received, New York, 25 Nov., 1895, from the Lake Street Elevated Railroad Company fifty and $\frac{50}{100}$ dollars, in full settlement of the above account.

THE FARMERS' LOAN & TRUST CO.,
By WM. H. LEUPP.

I certify the within account to be correct.

W. M. D."

Q. I show you these three documents and ask you by whom the third one was signed?

A. The Farmers' Loan and Trust Company, W. D. Searls, vice-president.

Q. The trustee under the mortgage?

A. Yes, sir.

Mr. KNIGHT: I offer these in evidence.

Objected to by counsel for defendants. Objection overruled by the court; to which ruling of the court counsel for defendants then and there duly excepted.

(Said three last-mentioned documents were thereupon read in evidence by counsel for complainant and are respectively the three documents next herein set forth, the first of the said documents being in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *Jan'y 4th*, 1895.

Lake Street Elevated R. R'd Co. to the Farmers' Loan and Trust Company, Dr.

346 Trustees' fees accepting deed of trust and certifying bonds Nos. 7421–7475..... $27.50"

Q. The letter dated January 7th, 1895, by whom was that written?

A. It is the American Trust & Savings Bank of Chicago.

(Said letter, being one of the three documents last above referred to, is in the words and figures following, to wit:)

"CHICAGO, *Jan. 7th*, '95.

W. L. Gary, sec'y Lake St. El. R. R. Co.

DEAR SIR: Enclosed find bill just received from the Farmers' Loan & Trust Company against your company for $27.50, amount due as trustees' fee for certifying bonds as stated. Kindly adjust the matter with them direct.

I also enclose our bill for the same amount as above for similar services.

Yours truly, W. P. KOPZ, *A. Sec'y.*"

(Said bill attached, being one of the three documents last above referred to, is in the words and figures following, to wit:)

Voucher No. 22, Jan'y, 1895.

"The Lake Street Elevated Railroad Company to the Farmers' Loan and Trust Co., New York.

For trustees' fees for certifying bonds Nos. 7421 to 7475, exclusive 1, as per bill, January 4th, '95, attached, 55 bonds, at 50c..... $27.50

Charge R. M. E., Lake St. extension.

Approved:
D. H. LOUDERBACK, *Pres't.*

Examined and approved:
W. L. GAREY, *Sec'y.*

347 Received Jan. 15, 1895, 1894, from the Lake Street Elevated Railroad Company twenty-seven and $\frac{50}{100}$ dollars, in full settlement of the above account.

THE FARMERS' LOAN & TRUST COMPANY,
By W. D. SEARLS.

I certify the above account to be correct.

W. M. D.
R. S. B."

Q. I now show you a document and ask you by whom was it signed?
A. Turner, McClure & Rolston.
Q. Who were they?
A. Attorneys for the Farmers' Loan and Trust Company, New York.
Q. New York city?
A. Yes, sir.
Q. Did you have any business with Turner, McClure & Rolston, except such as arose under the mortgage?
A. No, sir.

Mr. KNIGHT: I offer this in evidence. (Said last-mentioned document was thereupon read in evidence by counsel for complainant and is in the words and figures following, to wit:)

Voucher No. 36, Oct., 1894.

"The Lake Street Elevated Railroad Company to Turner, McClure and Rolston, Dr.

For payment on account of services of the above firm and Mr. McFarland's services in the matter of issuing Lake Street Elevated bonds and all things pertaining thereto up to date..... $500.00

Charge r'way—main.

Approved:
D. H. LOUDERBACK, *Pres't.*

Examined and approved:
W. L. GAREY.

I certify the above to be correct.

R. S. B.

348 Received Oct. 26th, 1894, from the Lake Street Elevated Railroad Company five hundred dollars in full settlement of the above account.

TURNER, McCLURE & ROLSTON."

Q. What was that for, Mr. Louderback?

A. It was for their legal services in connection with the trust deed for work they did in connection with the Farmers' Loan & Trust Company.

Q. Wasn't it in reference to the issue of the bonds to which you have referred, eight hundred and some odd, where Mr. Burry examined the vouchers and so forth?

A. Yes, sir.

Q. I will ask you by whom the document now shown you was signed.

A. The Farmers' Loan & Trust Company, W. D. Searls, vice-president.

Mr. KNIGHT: I offer this in evidence.

Objected to by counsel for defendant The Farmers' Loan & Trust Company. Objection overruled by the court; to which ruling of the court counsel for defendants then and there duly excepted.

(Said last-*em*ntioned document was thereupon read in evidence by counsel for complainant and is in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 Williams St.

NEW YORK, *Oct.* 20, 1894.

Lake Street Elevated R. R'd Co. to the Farmers' Loan and Trust Company, Dr.

Trustees' fees accepting deed of trust and certifying bonds Nos. 6501–7420..... ..... $460.00

To D. H. Louderback, treas."

349 (Counsel for complainant thereupon offered and read in evidence a certain letter accompanying said last-mentioned document; which said letter was in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *October* 23*rd*, 1894.

D. H. Louderback, Esq., treasurer Lake Street Elevated R. R. Co., Chicago, Ill.

DEAR SIR: We hand you herewith our bill for trustees' fees accepting deed of trust and certifying bonds Nos. 6501–7420 of the Lake Street Elevated R. R. Co..... ..... $460.00

Kindly send us check for the same and oblige,

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*

O K voucher.
D. M. L."

(Counsel for complainant thereupon offered and read in evidence the bill mentioned in said letter, said bill being in the words and figures following, to wit:)

Voucher No. 144, Oct., 189–.

"The Lake Street Elevated Railroad Company to the Farmers' Loan and Trust Co., New York.

For trustees' fees accepting deed of trust and certifying bonds of the Lake St. Elevated Railroad Co., Nos. 6501–7420, 920 bonds at 50c.			$460.00
350	Damages N. W. extension	$5	
	" main	17.50	
R'way	"	40	
"	Cicero	8	
"	N. W.	250	
"	Market	75	
"	Halsted	7.50	
"	North	7.50	
N. lines E. Lake St.		24.50	
G. espense, legal ex.		22	
		$460	

R. S. B.

I certify the above account to be correct.

W. M. D.

Examined and approved:
W. L. GAREY, *Sec'y.*

Approved:
D. H. LOUDERBACK.

Received Nov. 15, 1894, from the Lake Street Elevated Railroad Company four hundred sixty dollars in full settlement of the above account.

THE FARMERS' LOAN AND TRUST COMPANY,
By W. D. SEARLS, *V. P.*"

Q. Mr. Louderback, I show you some letters here and ask you to state from whom they are received and to whom they are directed.
A. The Farmers' Loan and Trust Company.
Q. The trustee under the mortgage?
A. Yes, sir.

Mr. KNIGHT: I offer these in evidence: First, letter of the Farmers' Loan and Trust Company dated April 6th, 1894.

(Said last-mentioned letter was thereupon read in evidence by counsel for complainant, and is in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *April 6th*, 1894.

John Roche, Esq., president Lake Street Elevated R. R. Co., Chicago, Ill.

DEAR SIR: Herewith we enclose our bill for services accepting trust and certifying bonds Nos. 5251–6500, both
351 inclusive, $625.

We also enclose our bill for services in receiving the payments for subscriptions to bonds, etc., 4,000, for which kindly send us check, and oblige,

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

Q. Mr. Louderback, in connection with that letter I will ask you if you know about this bill of $4,000 for services subscriptions to bonds?

A. That was prior to my incumbrance.

(Counsel for complainant thereupon offered and read in evidence a certain document; which said document was in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *August 23rd*, 1894.

John A. Roche, Esq., president Lake Street Elevated R. R. Co., Chicago, Ill.

DEAR SIR: We have had placed in our hands a copy of preamble and resolutions, passed by your board of directors on the 3rd day of August, 1893, calling for the delivery by us of 348 bonds of your company, to be issued under the mortgage of April 7th, 1893, to the American Trust & Savings bank and this company, as trustees.

We desire to state that the result of the interview had between you and the other gentlemen representing your company
352 and our counsel, Mr. H. B. Turner, was that this company would issue bonds at their par value only for such cash indebtedness as your company might be liable for under the provisions of the mortgage referred to. We notice that the preamble 'a' in the paper above mentioned calls for the issue of 348 bonds, without stating the cash cost of the right of way which is referred to. This is entirely contrary to the spirit of the agreement and understanding finally concluded with you at the interview referred to, and we decline positively to issue the bonds as your resolutions call for.

We desire now to state that, inasmuch as the legality of our position as trustees of Illinois property has been questioned, in consequence of our not having furnished bonds, as is stated to be required by your statutes, we feel it to be our duty to resign from this

trust, and will send you a formal resignation so soon as our counsel returns from the East.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.
R. G. ROLSTON, *Pres't.*"

Q. Mr. Louderback, did they ever send that formal resignation?
A. No, sir.

(Counsel for complainant thereupon offered and read in evidence a certain document, being in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *December* 31*st*, '94.

D. H. Louderback, Esq., treasurer Lake Street Elevated R. R. Co., Chicago, Illinois.

DEAR SIR: We have this day forwarded to you, per ex-
353 press, one package containing 55 Lake Street Elevated R. R. Co. bonds, Nos. 7421–7475, both inclusive, for $1,000 cash each, with the January 1st, 1895, coupon on.

By reference to Mr. Turner's letter to you in October you will note that ninety days after the ordinance is passed (which we understand was on the 2nd) you will be entitled to 55 more of the bonds, which will bring it to December 29th.

Kindly acknowledge receipt of the bonds and oblige,

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By M. D. SEARLS, *V. P.*"

(Counsel for complainant thereupon offered and read in evidence a certain document, being in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *September* 21, 1895.

D. H. Louderback, Esq., president Lake Street Elevated R. R. Co., corner of Lake & Rockwell streets, Chicago, Ill.

DEAR SIR: Your letter of 18th inst. received requesting us to forward to you the bonds which certain parties are entitled to in consequence of the railroad company being in full operation.

The matter has been submitted to our counsel, and he desires us to state to you that he has written to Mr. Burrie and would
354 suggest that you call upon Mr. Burrie, in your city, in relation to the matter, so that Mr. Burrie may advise us as to the correctness of our understanding of the same, as per our counsel's letter.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

(Counsel for complainant thereupon offered and read in evidence a certain document, being in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *October* 4, 1895.

D. H. Louderback, Esq., president Lake Street Elevated Railroad Co., Chicago, Illinois.

DEAR SIR: By advice of counsel and in accordance with his letter (a copy of which was forwarded to you on the 17th of October, 1894) we are sending you by express 90 bonds, which were to be delivered after the structure is completed and in operation, as follows:

To Hamilton Borden	2
Gould	2
Garrett Biblical Institute	80
Streeter	1
Lanz	3
Podasnik	2

We will send you on the 22nd of October 10 bonds which were to be delivered thirty days after the structure is completed, as follows:

Gehr	1
Stone	4
Gehr	1
Rogers	2
Wells	2

355 And on the 21st of December, to Bruner, 1 bond, which is to be delivered ninety days after the structure is completed.

Kindly acknowledge receipt and oblige,

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

Coupon- 4–5 canceled and enclosed.
(Express) $5,000.
No. enclosure, —. No. 7476–7565.
Oct. 7, '95. R. S. B."

Q. For what were those bonds, Mr. Louderback?

A. They are bonds issued on account of the right of way on East Lake Street extension.

Q. That is the extension of the road from Market street to Wabash avenue?

A. Yes, sir.

(Counsel for complainant thereupon offered and read in evidence a certain document, being in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *October 30th*, 1895.

D. H. Louderback, Esq., president Lake Street Elevated Railroad Company, Chicago, Ills.

DEAR SIR: Herewith we enclose 10 bonds of your company, which were to have been delivered to you on the 22nd of October, viz:

356 1 for Cehr,
4 for Stone,
1 for Cehr,
2 for Rogers,
2 for Wells,

being Nos. 7566–7575, both inclusive, for $1,000 each, with current coupon on.

We enclose also coupons 4 and 5, cancelled, from said bonds.

This will leave one bond to be delivered on the 21st of December to Mr. Bruner.

We enclose our bill for trustees' fees in certifying bonds Nos. 7476–7576, 101 bonds, at 50 cents each, $50.50.

You will note that this takes in the one bond to be delivered on December 1st.

Kindly send us check for the same and oblige,

Yours very truly,

THE FARMERS' LOAN AND TRUST CO.
W. D. SEARLS, *V. P.*

(Encs.) By Adams Express."

(Counsel for complainant thereupon offered and read in evidence a certain document, being in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *January* 16, 1896.

D. H. Louderback, Esq., president the Lake Street Elevated R. R. Co., 444 North Clark St., Chicago, Ill.

DEAR SIR: Yours of 7th instant received desiring the
357 $1,000 bond on account of Wabash Avenue frontage extension. Won't you check off the following first, and let us know if you agree, for it seems to us that we cannot send on that one? We delivered as follows:

1894, 18 Oct.	Nos. 7373–7420	48	bonds.
" 31 Dec'b'r.	" 7421–7475	55	"
1895, 4 Oct'b'r.	" 7476–7565	90	"
4 "	" 7566–75	10	"
Total bonds		203	

Were not these 203 all that were to be issued?

Yours very truly, WM. H. LEUPP, *2nd V. P.*

Answered Jan'y 18th, 1896."

(Counsel for complainant thereupon offered and read in evidence a certain document, being in the words and figures following, to wit:)

"The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *January 7th*, 1896.

Messrs. Knight & Brown, Chicago, Illinois.

GENTLEMEN: We have yours of the 4th inst. enclosing statement setting forth the position of the Lake Street Company in regard to application made by William Ziegler and others, and have referred the same to our counsel.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By R. G. ROLSTON, *Pres't.*"

358 Q. Mr. Louderback, I show you this batch of letters and ask you by whom they were signed.

A. Turner, McClure & Rolston, and one by myself.

Q. Never mind yours.

A. Turner, McClure & Rolston.

Q. The attorneys referred to heretofore?

A. Yes, sir.

Mr. KNIGHT: I offer these in evidence.

(Said letters were thereupon read in evidence by counsel for complainant and are respectively as follows.)

"*In re* Lake Street Elevated.

SEPT. 4, 1894.

John A. Roche, Esq., president Lake Street Elevated Railroad Company, Chicago, Ills.

DEAR SIR: Mr. Burry has sent to the Farmers' Loan and Trust Company a letter, a copy of which we enclose for your information.

We have received from the trust company two copy agreements, made by your railroad company with the Garrett Biblical Institute and William E. Clow, respectively, and we will be obliged to you if you will send copies of the other contracts making up the entire amount of 348 bonds which you now desire to have issued.

From your letter and the copies of these contracts we notice that the consideration of these contracts is payable in bonds, and as it is, of course, quite clear that the holders of these contracts would take, say, fifty cents on the dollar in cash, are we not now confronted with the same questions which embarrassed us previously as
359 to issuing bonds at a rate below par?

Mr. Knight, when he was here, stated that these contracts were all made before the trust company's objection to issuing bonds at

less than par was stated, and before the demand was made for the issuing of a very large number of bonds which the trust company was reluctantly obliged to decline to issue. If we understood Mr. Burry correctly, he had some conversation with you on the subject, from which it would seem that Mr. Knight was mistaken in his statement. Please let us know how this is. Moreover, from a conversation with Mr. Burry we are given to understand that the North Side line has been definitely abandoned, and that the Halsted line will most probably be abandoned. If this is so, would it not be proper to consider the fifteen bonds issued in each of these cases as issued on account of the present requisition?

Please return us the copy of Mr. Burry's letter.

Very truly, TURNER, McCLURE & ROLSTON."

In re Lake Street Elevated.

OCT. 16, 1894.

D. H. Louderback, Esq., treasurer Lake Street Elevated Railroad Company, Chicago, Ills.

DEAR SIR: We have your letter of the 13th and also your letter to the Farm-s' Loan and Trust Company. Mr. Burry has not yet notified us that the ordinance has passed. As soon as the
360 ordinance is passed we will advise the trust company to certify a portion of the bonds. We cannot see our way to issuing the bonds to Messrs. Underwood & Green. No paper that we have yet received gives the slightest information as to what the services were and what the value of them was. We must have very full information on this subject to be able to issue these bonds, and it does not look to us—to be perfectly frank—that we can issue them at all. We return you the vouchers of Messrs. Underwood & Green and Wallace. Please get Mr. Burry at once on the receipt of this to write to the effect that the ordi-ance has passed, and state the date upon which it passed.

Very truly, TURNER, McCLURE & ROLSTON.

"*In re* Lake St. Elevated.

OCT. 11, 1894.

D. H. Louderback, Esq., Lake St. Elevated R'y Co., Chicago, Ill.

DEAR SIR: The Farmers' Loan and Trust Company has your letter of the 8th. We have made very full and careful examinations of the papers that have been sent to us. We do not find that any bonds are due now, inasmuch as the ordinance, if our information is correct, has not been passed. We have asked Mr. Burry to inform us when the ordinance is finally passed and approved. After the ordinance is passed we do not see why the trust company should not issue bonds in pursuance of some of the contracts
361 and agreements at the time when the bonds are due and payable according to the terms of the contract. Most of them are not due until the railroad is built and operated on Lake street, and others are not due until a certain period of time after the ordi-

nance has passed and been approved, which time, as we understand it, has not yet begun to run.

Very truly yours,

TURNER, McCLURE & ROLSTON."

"*In re* Lake Street Elevated.

OCTOBER 18, 1894.

Messrs. Knight & Brown, 87 Washington street, Chicago, Ill.

DEAR SIRS: After examining the papers that have been sent to us respecting the Lake Street elevated road, we have advised the trust company to execute and deliver forty-eight bonds at once, being: J. D. Wallace, twenty-five bonds; Samuel Baker, fifteen bonds, and Charles D. Kerfoot, eight bonds. We have also recommended the trust company to certify fifty-five bonds on or about January 2nd, 1895, being ninety days after the ordinance was passed. These fifty-five bonds are the following: Charles Kerfoot, O. W. Bruner, and A. R. Sheppard, one bond in all; Heald, five bonds; Burley, two bonds; Simm, one bond; Wallace, four bonds; Maus, fifteen bonds; Clow, ten bonds: Bailey, two bonds; Buswell, one bond; Kerfoot, one bond; Ingalls, four bonds; Myers, one
362 bond: Thompson, two bonds; Wheeler, two bonds; Wheeler, three bonds. We have also advised them to deliver one bond, being Bruner's bond, ninety days after the structure is completed, and also ten bonds thirty days after the structure is completed, these ten bonds being the following: Gehr, one bond; Stone, four bonds; Gehr, one bond; Rogers, two bonds; Wells, two bonds; also eighty-nine and a half bonds when the railroad is in operation. The eighty-nine and a half bonds are the following: Hamilton Borden, two bonds; Gould, one bond; Garrett Biblical Institute, eighty bonds; Streeter, one bond; Lanz, three bonds; Podrasnik, two bonds; Quinlan, half a bond.

Thus we are recommending in all the signing of 202½ bonds.

We cannot see any reason for issuing the bonds which you desire for Underwood & Green, or, indeed, any bonds whatever to them. The number given to them is exceedingly large, and we have no evidence that they have done anything whatever.

Please direct your parties to send us a check for five hundred dollars, half of which is our own charge and half Mr. MacFarland's charge in matters connected with the issuing of these bonds.

Very truly, TURNER, McCLURE & ROLSTON."

363 "*In re* Lake Street Elevated.

SEPTEMBER 17, 1894.

Messrs. Knight & Brown, 87 Washington street, Chicago.

DEAR SIRS: We have your letter of the 13th. We have also received the copy contracts which have been sent us and the copy of opinion in the case of Doane *v.* City Railway Company; which latter we herewith return to you with thanks.

We cannot understand your statement that Mr. Turner promised

Mr. Knight that the bonds should be certified and sent to Chicago 'by the latter part of next week.' Mr. Turner made no promise to Mr. Knight that the bonds should be certified and sent at all. What passed between them was to the effect that certain evidence respecting these bonds and the necessity for them must be given.

For our convenience we have made a memorandum of *the* these different contracts, and we send you some suggestions which occur to us after examining them.

(1.) Hamilton Borden. Not yet payable.

(2.) Charles H. Gould. Same.

(3.) Samuel Baker. Full details must be furnished, under
364 oath, as to what the services are and as to their value and how much you propose to pay for them in bonds; also, of course, what Baker did.

(4.) Garrett Biblical Institute. Not yet payable.

(5.) James D. Wallace. See No. 3. We must have full evidence as to what is due under this contract.

(6.) D. L. Streeter. Not yet due.

(7.) George Lanz. Not yet due.

(8.) A. Podrasnik. Not yet due.

(9.) A. R. Sheppard. Not yet due. See also Nos. 3 and 51.

(10.) Do. Same as No. 9.

(11.) Do. Same as No. 9.

(12.) O. W. Bruner. Same as No. 9.

(13.) James Heald. Nothing is needed for this, as the money has already been deposited.

(14.) Charles A. Kerfoot. Evidence must be furnished.

(15.) Do. Same.

(16.) Clarence Burley. Same; but not payable until 90 days after the ordinance became a law.

(17.) J. C. Simm. Not yet payable, and evidence needed in any case.

(18.) J. D. Wallace. Same.

(19.) Frederick K. Maus. Same.

(20.) William E. Clow. Same.

(21.) George C. Bailey. Same.

365 (22.) Albert L. Buswell. Same.

(23.) Edward B. Quinlan. Not yet payable.

(24.) Charles Kerfoot. Same as other contract.

(25.) Dr. E. Ingalls. Not yet payable. Evidence required.

(26.) E. B. Myers. Same.

(27.) Arthur C. Thompson. Same.

(28.) M. A. Wells. Same.

(29.) O. W. Bruner. Same.

(30.) Arthur C. Gehr. Not payable until after the erection of the elevated structure.

(31.) Joseph A. Stone. Same.

(32.) D. H. Louderback. Evidence required.

(33.) Underwood & Green. A very large amount of evidence will be necessary to justify the issuing of 134 bonds.

(34.) Arthur C. Gehr. Not yet due.

(35.) George Mills Rogers. Not yet due.
(36.) Marion Pickett. Evidence required.
(37.) Evidence required.

You will note that the most of these claims are not yet due, and, moreover, when the claims are made simply for services, as these are made, we must have details respecting the services and know what they are. You can hardly expect a trustee who is worth anything to issue bonds simply 'for services,' without knowing something about the services. The meaning of that term is too well understood.

366 We would suggest that you confer with Mr. Burry, our agent and correspondent, and get up affidavits and statements of fact that are approved by him, so that he can recommend the trust company to issue the bonds. We must know what these bonds are wanted for and where they are going to, or the trust company will not issue them.

Very truly, TURNER, McCLURE & ROLSTON."

"*In re* Lake Street Elevated.

NOVEMBER 24TH, 1894.

Messrs. Knight & Brown, 87 Washington street, Chicago, Ills.

GENTLEMEN: Your letter of November 12th was duly received, and we regret that we have allowed the same to remain so long unanswered. Our Mr. Turner, who is now absent in the West, has had exclusive charge of these matters and is the only gentleman in the office who is informed about them. We expect him to reach New York within a very short time now, and upon his arrival your letter will be taken up and fully answered.

Yours truly, TURNER, McCLURE & ROLSTON."

367 "*In re* Lake Street Elevated.

DEC. 22, 1894.

Messrs. Knight & Brown, 87 Washington street, Chicago, Illinois.

DEAR SIRS: Your letter of the 13th inst. would have been answered before this had it not been for Mr. Turner's absence in Milwaukee.

We understand your position, as representing the Lake Street Elevated Railway Company of Chicago, to be substantially this: The mortgage provides in substance for the issue of bonds for certain purposes, among which is the payment of interest during the first two years. These bonds are to be sold and the proceeds applied to the particular purpose in question. From this you argue that if the bonds which you have already received for interest (being the amount of the July interest at par) do not realize on their sale the full amount required to pay the interest in question, then your company is entitled to have additional bonds certified and sold, and so on until the interest is paid from the proceeds. The bonds which you received for the July interest seem to have sold at about fifty cents on the dollar. If your construction of the mortgage is cor-

rect, and it were understood that the trustees would issue bonds on that theory, it seems to us that it would be a serious question whether you could obtain your bonds and sell them quickly enough to keep pace with the fall in price.

368 We cannot take your view of the mortgage. That instrument does, of course, provide that bonds can be issued under certain circumstances to be sold and the proceeds applied to certain specific purposes; but it is no part of the theory of the mortgage that bonds must be issued for a certain purpose until by their sale they realize all the money needed for that purpose. You were entitled to bonds to the amount at par of the July interest, and you received them. But the trustees do not guaranty the payment of that interest out of the sale of the bonds. The mortgage was not made on the assumption that your company was impecunious and was engaged in its great undertaking with the idea of raising all the necessary money by selling its obligations at fifty or lower. On the contrary, it expressly appeared that your company had stock to the amount of five millions of dollars. The mortgage provided that in cases of necessity, on certain certificates, you could issue bonds for certain specified purposes. These bonds were to be sold and their proceeds applied to the purposes in question. The possibility that they might sell below par does not seem to have been considered. But if they did sell below par it was your misfortune. The deficiency must be made up from your other resources. As we read your letter, you seem hitherto to have been able to do so.

369 The trust company will not lend itself to any scheme by which it would be obliged to certify bonds indefinitely, certifying larger amounts as their value fell on the market. If it did so, a time would soon come when they would be of no value at all. It remains only to answer your other question. In your judgment, if the trustee will not pursue the course you desire, it should resign.

It does not seem necessary to take much time in considering this proposition. Over five million dollars of these bonds have been already issued and sold. A large number, perhaps all, of these bonds have passed into the hands of *bona fide* holders, to whom the trust company owes a duty. Your request for the resignation is avowedly with the intention of placing the trusts in the hands of parties who will pursue a course which the trust company is advised would be illegal and which it believes would be most prejudicial to the interests of the holders of the existing bonds. It cannot aid in any way in facilitating the proposed overissue. On the contrary, it deems it its duty to do everything it can to prevent it.

Very truly, TURNER, McCLURE & ROLSTON."

"JULY 31, 1895.

D. H. Louderback, Esq., president Lake Street Elevated Railroad Company, Rockwell street, Chicago, Ill.

DEAR SIR: The Farmers' Loan and Trust Company has referred to us your letter of the 24th inst., having reference to a

release of right of way for the Humboldt Park line. Upon an examination of the mortgage we find that the power to release is conferred by the eleventh article and is only vested in the trustee when there shall be no default in the payment of principal or interest on any of the bonds. We have been formally notified of default not only in the payment of the coupon due July 1st inst., but also in the payment of some of the coupons due January 1st last. The trustee, therefore, in our judgment (and we have so advised the Farmers' Loan and Trust Company), is not authorized at this time to execute any release of the mortgaged property.

Yours very truly,

TURNER, McCLURE & ROLSTON."

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"*In re* Lake Street Elevated.

AUG. 7, 1895.

D. H. Louderback, Esq., president, &c., corner Lake and Rockwell streets, Chicago.

DEAR SIR: We have your letter of August 2d, in reply to ours of the 31st ult., respecting proposed release of property of the Lake Street Elevated Railroad Company from the lien of the trust mortgage. Assuming that the facts are as you state them and that it would be most desirable for the interests of the bondholders to make the release, the trouble with us is that the mortgage as we read it does not authorize us to make the release under the existing circumstances. We hardly think that you mean to be understood as urging us to advise the trust company to do something that it has no authority to do because it may be of benefit to the trust estate that it should be done. At present, however, the situation is complicated by the fact that certain bondholders here object to the release. Under these circumstances we do not see how the trustee can do what you wish, and we should be very much surprised if the attorneys of the trust company in Chicago, which is cotrustee, do not take the same view that we do, namely, that we cannot go beyond the terms of the mortgage, especially in view of the fact that certain bondholders protest against it.

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Regretting the situation, we remain very truly yours,

TURNER, McCLURE & ROLSTON."

"*In re* Lake Street Elevated.

OCTOBER 17, 1895.

Messrs. Knight & Brown, Chicago, Illinois.

DEAR SIRS: We are very much obliged to you for copy of brief and argument for appellees in the case of Ziegler against The Lake Street Elevated Railroad Company, and also the opinion of Judge Showalter.

We presume you are aware that the Farmers' Loan and Trust Company has declined to foreclose in accordance with Mr. Ziegler's request. As a matter of law, we think that the trustees have a right to foreclose in the existing condition of things, but they are not bound to do so, and that a bondholder cannot himself

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foreclose for an alleged breach of duty on the part of the trustees The mortgage is not as clear as it might be on some of these points, but it seems to us that this is the situation.

Yours very truly,

TURNER, McCLURE & ROLSTON."

"*In re* Lake Street Elevated.

NOVEMBER 15TH, 1895.

Messrs. Knight & Brown, 87 Washington street, Chicago, Illinois.

DEAR SIRS: Your letter of November 12th, with copy letter of the American Trust and Savings bank and copies requests of the Northern Trust Company and of the bondholders' committee of the Lake Street Elevated, was duly received. We have also received from the Farmers' Loan and Trust Company your letter of the 12th to that company in reference to the same matter.

The Farmers' Loan and Trust Company requests us to say to you that it is unable to find that it wrote to you on the 29th of
373 October, as mentioned in your letter, and is under the impression that your letter was intended for the American Trust and Savings Bank of Chicago.

With reference to your letter to us, we suppose it was also sent to us by mistake, and was probably intended to go to the Northern Trust Company. We return herewith the two requests.

Yours very truly,

TURNER, McCLURE & ROLSTON."

Enc.

Q. Mr. Louderback, I hand you another batch of letters and ask you by whom those were signed.

A. Runnells & Burry.

Q. William Burry also, are they not?

A. Runnells & Burry and William Burry; yes, sir.

Recess to 2 o'clock p. m.

374 2.00 O'CLOCK P. M.

Court met pursuant to adjournment.

Whereupon the direct examination of the witness D. H. LOUDERBACH was continued by Mr. Knight as follows:

Mr. KNIGHT: I desire to make a correction as to a statement I made this morning in regard to the Chicago & Northern Pacific mortgage. Of course, it shows for itself in the record. Instead of six hundred and fifty thousand it was thirty thousand bonds of $1,000 each.

I offer in evidence a letter from the Farmers' Loan & Trust Company dated October 9th, 1894, to the Lake Street Elevated Railroad Company. I will continue with the letters I was offering in evidence at the time of adjournment.

(Said letter dated October 9th, 1894, was thereupon read in evidence by counsel for complainant, and was in the words and figures following, to wit:)

"The Lake Street Elevated R. R. Co., R. S. Buchanan, Esq., auditor, corner of Lake & Rockwell streets, Chicago, Ill.

DEAR SIR: Your letter of the 2nd inst. received, wherein you request us to send you statement of account of the Lake Street Elevated R. R. Co.

We have prepared a statement of your coupon account and forwarded the same to the American Trust & Savings bank, Chicago, Ill., who will no doubt exhibit it to you if you so de-
375 sire.

Yours very truly,
THE FARMERS' LOAN & TRUTS COMPANY,
By W. D. SEARLS, *V. P.*"

I now offer a letter from Runnells & Burry, dated August 20th, 1894, to the American Trust & Savings bank and the Farmers' Loan & Trust Company, New York, trustees, etc., signed by William Burry. It is short and I will read it because I want the court to hear it.

(Said last-mentioned letter was thereupon read in evidence by counsel for complainant and is in the words and figures following, to wit:)

"GENTLEMEN: The Lake Street Elevated Railroad Company has today laid before me certain papers, etc., in reference to the request lately made by it to you for the issue to it of 348 bonds secured by its mortgage to you dated April 7th, 1893. Among the papers was the ordinance of the city of Chicago authorizing the City Railroad Company to construct an elevated railroad along Lake street from Market street to Wabash avenue. This ordinance is founded upon the written consent and petition of the majority of the frontage on that part of Lake street to be occupied by the railroad tracks, and the obtaining of such consent is a prerequisite to the passage of such an ordinance. The railroad company laid before me, as agent under the second covenant of said mortgage, contracts they have made for acquiring the right of way and consent of the property-owners to the erection of the railroad. The contracts have all been
376 issued in duplicate and I examined the duplicate of each contract retained by the R. R. Co. The contracts for the payment by the R. R. Co. for the right of way and the consent above referred to, and also for the services of certain parties in obtaining right of way, provide for payment in bond and call for 330½ bonds absolutely. There is also a contract with a Mr. Baker to pay him a reasonable number of bonds for his services in obtaining the right of way. He claims 50 bonds as a reasonable compensation, but the railroad company ask on that account 17½ bonds, making in all a total of 348 bonds required by them.

Taking 17½ bonds as a reasonable amount to be allowed Mr. Baker for his services, there have been submitted to me contracts binding on the railroad company for the delivery of 348 bonds.

The railroad company also submitted to me an executed accept-

ance of the ordinance, which the company says it has not yet delivered, because the date for the delivery of some of the bonds to the different parties date from such acceptance.

Very respectfully yours,
(Signed) WM. BURRY."

Counsel for complainant thereupon offered and read in evidence a portion of a letter signed by William Burry, dated October 11th, 1894, to Messrs. Knight & Brown, United States Express building, city, said portion of said letter being as follows, to wit:

"We herewith return to you the certified copy of the petition to the city council upon which was passed the ordinance giving
377 the Lake Street elevated road right to build tracks on Lake street from Market street to Wabash avenue. This was given us for the purpose of forwarding it to New York. They have examined it there and returned it to us."

(Counsel for complainant thereupon offered and read in evidence a certain letter from Mr. Burry dated July 22nd, 1895, said last-mentioned letter being as follows, to wit:)

"MY DEAR KNIGHT: In accordance with our conversation this afternoon, I enclose to you herewith a memorandum of my charge in connection with the Lake Street Elevated R'y Co."

(Counsel for complainant thereupon offered and read in evidence a certain letter of March 12th, 1895, to Knight & Brown, and signed by William Burry, said last-mentioned letter being as follows, to wit:)

"GENTLEMEN: Since I was appointed agent to see the disbursements of the proceeds of bonds in the Lake Street Elevated Railroad Company, there have been two issues of bonds. I would like to receive from the company, as soon as may be, a statement showing the disbursement of the funds realized from the bonds issued and showing the disposition of the bonds. The statement should be full and show by reference the file number of the voucher for each disbursement, and also such reference to the general books of the company as to render verification easy. Will you please have the proper officer of the company prepare such a statement and send it to me as soon as may be? After I have received it I will then take up with you the setting of a time and place for the examination of the vouchers, etc., so that I may verify the statement and make a report to the trustees.

Very truly yours,
(Signed) WM. BURRY."

378 (Counsel for complainant thereupon offered and read in evidence a certain letter from Mr. Burry dated March 29th, 1895, to R. S. Buchanan, assistant secretary of Lake Street Elevated Railway Company, Lake and Rockwell streets, city; which said last-mentioned letter was in the words and figures following, to wit:)

"DEAR SIR: Your letters of the 16th and 26th inst., regarding the disposition of the bonds issued by the Farmers' Loan and Trust Company, we received. I was called out of town and unable to take the matter up, but have now returned and hope to take it up with you next Monday or Tuesday.

Very truly yours,

(Signed) WM. BURRY."

(Counsel for complainant thereupon offered and read in evidence a certain letter dated April 23rd, 1895, to Messrs. Knight & Brown, signed by Runnells & Burry; which said last-mentioned letter was in the words and figures following, to wit:)

"GENTLEMEN: We are in receipt of your letter of yesterday relating to the condemnation case of The Metropolitan Elevated Road against The Lake Street Elevated Road *et al.* We do not know what your motion to dismiss the petition is grounded upon. Do you expect to argue it next Thursday and do you wish anything done by us in the matter? We understand that the appearance day for the Farmers' Loan & Trust Company is the first Monday in May. In the suit commenced by Mr. Ziegler for a receiver we would like to be kept advised of just what is done and particularly as to any application for a receiver.

Very truly yours,

379 (Signed) RUNNELLS & BURRY."

(Counsel for complainant thereupon offered and read in evidence a certain letter, also from Messrs. Runnels & Burry, dated May 4th, 1895, directed to Knight & Brown; which said last-mentioned letter was as follows, to wit:)

"GENTLEMEN: We have not received from you a copy of the motion to dismiss in the case of The Metropolitan Elevated Company *vs.* Lake Street Company. As the motion has been fully argued, do you wish us to file a motion like it or will it be sufficient for us to simply enter an appearance on next Monday? We understand that a condemnation case can be tried as well on a simple appearance as on any other kind of a pleading.

Very truly yours,

(Signed) RUNNELLS & BURRY."

(Counsel for complainant thereupon offered and read in evidence a certain letter dated July 13th, 1895, signed by Messrs. Runnell & Burry and directed to Messrs. Knight & Brown; which said last-mentioned letter was in the words and figures following, to wit:)

"GENTLEMEN: By the 11th covenant of the Lake Street Elevated mortgage it is provided, upon the sale of the property of the company, the proceeds thereof shall be applied to the purchase of new property or to the redemption of bonds. The settlement of the suit with the Metropolitan Elevated Railroad Company produced $5,000,

which we understand comes within the provisions referred to. What disposition of this money do you understand should be made?

Very truly yours,

(Signed) RUNNELLS & BURRY."

380 The COURT: Who were the solicitors for Ziegler?

Mr. KNIGHT: Mr. McClellan at one time, and now Messrs. Herrick, Allen & Boyesen.

Mr. HERRICK: That was long ago. I had nothing to do with that suit at any time.

(Counsel for complainant thereupon offered and read in evidence a certain letter dated October 28th, 1895, directed to Messrs. Knight & Brown and signed by Runnells & Burry; which said last-mentioned letter was as follows, to wit:)

"GENTLEMEN: Enclosed please find a memorandum of Mr. Burry's charge as representative of the trustees in the Lake Street Elevated Railroad matter. Will you please put it into form to suit you and start it in course of payment?

Very truly yours,

(Signed) RUNNELLS & BURRY."

(Counsel for complainant thereupon offered and read in evidence a certain letter dated January 29th, 1896, from Runnells & Burry, and directed to Mr. D. H. Louderback, president Lake Street Elevated Railroad Company, city; which said last-mentioned letter was in the words following, to wit:)

"DEAR SIR: We have carefully considered your communication concerning the affairs of your company, and have also communicated with New York. The American Trust & Savings Bank has notified us that it declines to join in any bill for foreclosure. Under all the circumstances, which need not be here further discussed, the Farmers' Loan & Trust Company has decided that it is its duty to at once file a bill of foreclosure We will, therefore, file such a bill tomorrow.

381 Regretting the necessity of this action, we remain,

Very truly yours,

(Signed) RUNNELLS & BURRY."

Q. Mr. Louderback, do you remember the letter to which I have just referred?

A. Yes, sir.

Q. Dated January 29th?

A. Yes, sir.

Q. Do you remember when it was received?

A. It was received the following morning.

Q. The morning of January 30th?

(Counsel for complainant thereupon offered and read in evidence a letter signed by Messrs. Runnells & Burry, dated January 7th, 1896, and directed to Messrs. Knight & Brown; which said last-mentioned letter was as follows, to wit:)

"GENTLEMEN: We enclose you herewith a bill from Mr. Burry for services as agent under the Lake Street Elevated Railroad Company mortgage. Will you kindly put it in process of payment?

Very truly yours,

(Signed) RUNNELLS & BURRY."

(Counsel for complainant thereupon offered and read in evidence a certain letter from the Lake Street Elevated Railroad Company to Messrs. Turner, McClure & Rolston, Farmers' Loan & Trust Company, New York city, dated September 12, 1894; which said last-mentioned letter is in the words and figures following, to wit:)

"DEAR SIRS: Yours of September 4th not received until 10th inst. In response to your request we have forwarded by express copies of all contracts relating to the East Lake Street right
382 of way.

Your statement 'that it is quite clear that the holders would take 50 cents on the dollar in cash on account' is a wholly unwarranted fact. The owners of this property are all well-to-do people, and they look upon the bonds as an investment, and considered the contract in that light.

It was explained to you by Mr. Knight why these contracts were made for bonds instead of cash. The contracts were made in good faith, and we must carry them out.

If we had undertaken to pay cash we should not have secured the frontage for a dollar less than what we have, and we would only have been able to liquidate one-half the cost thereof and go in debt for the other half.

The contracts were not all made before the trust company's objection, as was stated, but, as you will observe, all the larger contracts were made before that time, and the action of your company did not change our systems of obtaining the frontage in the least, but continued to make contracts payable in bonds as before.

Mr. Burry was not authorized to make any statement in regard to the company abandoning the North Side or the Halsted Street line. The company received more than it has cost it for the North Side line, but under any circumstances the money was expended in good faith for these rights of way. The bonds cannot be returned, neither would it be right to charge it against the East Lake
383 Street extension, as that has to stand on its own merits.

The company has not abandoned either of the lines it is authorized to build.

The ordinance should have been accepted long ago and work commenced, but we are unable to do so because we cannot make the delivery of the bonds required under the contracts, based upon the acceptance of the ordinance.

We desire to carry out all contracts in good faith, and those with the property-owners as well as others. If we cannot pay the property-owners as we have agreed, then we ought not to accept the ordinance, for in that case we would be obtaining signatures in bad faith.

We trust there may be no further delay in this matter.

Yours truly, THE LAKE STREET ELEVATED RAILROAD COMPANY,
By JOHN A. ROCHE, *President.*"

(Counsel for complainant thereupon offered and read in evidence a certain letter from the assistant secretary, R. S. B., to William Burry, Esq., dated March 26th, 1895; which said last-mentioned letter is as follows, to wit:)

"DEAR SIR: Upon receipt of your letter of March 12th, addressed to Knight & Brown, I wrote you on March 16th that we had prepared statement showing disposition of the bonds issued by the Farmers' Loan & Trust Co., in accordance with your request, and also advised you that the vouchers were ready for your in-
384 spection.

Not having heard from you, I write to ask when it will be convenient for you to verify the statement and vouchers, as we are keeping them out of our file specially for your purpose.

Yours truly, —— ——,
Ass't Secretary."

(Counsel for complainant thereupon offered and read in evidence a certain letter from R. S. B., assistant secretary, to William Burry, dated March 16th, 1895; which said last-mentioned letter is as follows, to wit:)

DEAR SIR: Your letter of March 12th, addressed to Messrs. Knight & Brown, relative to disposition of late issues of bonds to the Lake Street Elevated R. R. Co., has been referred to me for attention.

I herewith enclose statement asked for, and have the vouchers ready for your inspection, and shall be happy to give you any further information necessary to enable you to verify the disbursements fully.

It would be more convenient for us if you would call at this office any time next week, but I shall hold myself in readiness to meet you at any other place you may suggest at any time.

Yours truly, R. S. B.,
Ass't Secretary.

385 (Counsel for complainant thereupon offered and read in evidence a certain letter from D. H. Louderback, president, to Mr. R. Laughlin, dated March 15th, 1895; which said last-mentioned letter is as follows, to wit:)

"DEAR SIR: Herewith find letter from Knight & Brown; also from William Burry, attorney for the trustees under the mortgage.

Will you please have this statement made up immediately and in a very thorough manner and accompanied by all the vouchers and have the same taken to Mr. Burry's office, so that he may examine them personally?

Yours truly, D. H. LOUDERBACK, *President.*"

(Counsel for complainant thereupon offered and read in evidence a certain letter from Messrs. Knight & Brown to D. H. Louderback, dated March 14, 1895; which said last-mentioned letter is as follows, to wit:)

"DEAR SIR: We herewith send you communication this day received from Mr. Burry.

We suppose this should have immediate attention.

Yours very truly, KNIGHT & BROWN."

(Dictated.)

(Counsel for complainant thereupon offered and read in evidence a certain letter from D. H. Louderback to Mess. Turner, McClure & Rolston, dated August 2, 1895; which said last-mentioned letter is as follows, to wit:)

"GENTLEMEN: Yours of July 31st received. There should
386 be no default on the coupons due January 1st, 1895, as the money has been deposited for some time to the credit of these coupons, and all the parties holding them have to do is to present them and get their money, without any reservations.

We think the action of the trustees in refusing to withdraw this property from under the mortgage and allow its sale is directly against the interest of the bondholders, as it simply means to pay an annual tax of some $15,000.00 on property which the road will never use and prevents them from making other improvements in extensions which would be greatly in the interest of the company. We think that on a full investigation that the trustees or their representatives would see the wisdom of the directors' action in voting to abandon this right of way and to sell the property, and we do not think, in this respect, that the trust is being properly administered in the interest of the bondholders or the road, and we believe that this should be considered in any conclusion arrived at, irrespective of the technical condition in the mortgage.

If the trustees' agent would go over this line, we are satisfied that his judgment would corroborate that of our board of directors.

Yours truly,

(Signed) D. H. LOUDERBACK, *President.*"

387 (Counsel for complainant thereupon offered and read in evidence a certain letter from D. H. Louderback to Messrs. Turner, McClure & Rolston, dated August 2nd, 1895; which said last-mentioned letter is as follows, to wit:)

"GENTLEMEN: Yours of July 31st received. There should be no default on the coupons due January 1st, 1895, as the money has been deposited for some time to the credit of these coupons, and all the parties holding them have to do is to present them and get their money without any reservations.

We think the action of the trustees in refusing to withdraw this property from under the mortgage and allow its sale is directly against the interest of the bondholders, as it simply means to pay an

annual tax of some $15,000.00 on property which the road will never use and prevents them from making other improvements in extensions which would be greatly in the interest of the company. We think that on a full investigation that the trustees or their representatives would see the wisdom of the directors' action in voting to abandon this right of way and to sell the property, and we do not think in this respect that the trustee is being properly administered in the interest of the bondholders or the road, and we believe that this should be considered in any conclusion arrived at, irrespective of the technical condition in the mortgage.

If the trustees' agent would go over this line, we are satisfied that his judgment would corroborate that of our board of directors.

Yours truly,

(Signed) D. H. LOUDERBACK, *President.*"

388 (Counsel for complainant thereupon offered and read in evidence a certain letter from D. H. Louderback to the Farmers' Loan & Trust Company, dated Oct. 8th, 1895; which said last-mentioned letter is as follows, to wit:)

"DEAR SIR: I beg to acknowledge receipt of your letter of October 4th and of ninety (90) bonds which came to hand by express.

I have also received the canceled coupons due January and July 1st, which I take it are what are referred to by the notation at the foot of your letter.

Yours truly,

(Signed) D. H. LOUDERBACK, *President.*"

(Counsel for complainant thereupon offered and read in evidence a certain letter from Knight & Brown, dated May 8, 1893; said last-mentioned letter is as follows, to wit:)

"GENTLEMEN: We herewith enclose certified copy of mortgage of the Lake Street Elevated Railroad Company to American Trust & Savings bank and Farmers' Loan & Trust Company, recorded this day.

Yours very truly, KNIGHT & BROWN,
General Solicitors Lake Street Road.

To the Farmers' Loan & Trust Company, 16 Williams St., New York."

(Counsel for complainant thereupon offered and read in evidence a certain letter from Clarence A. Knight to Farmers' Loan & Trust Company, dated May 29, 1893; which said last-mentioned letter is as follows, to wit:)

389 "GENTLEMEN: The National Bank of Commerce of New York will deliver to you ten of the old 6% bonds of the Lake Street Elevated Railway Company, to be exchanged for a like number of the new 5% bonds. The coupons due July 1, 1893, upon these 5% bonds are to be clipped, as we have paid the interest here due to July 1st upon these bonds.

Yours very truly, CLARENCE A. KNIGHT."

(Counsel for complainant thereupon offered and read in evidence a certain letter from Knight & Brown to the Farmers' Loan & Trust Company, dated May 31, 1893; which said last-mentioned letter is as follows, to wit:)

"GENTLEMEN: On cancellation of the 6% bonds of the Lake Street Elevated Railway Company we desire to have you execute the enclosed release deed for the purpose of clearing the records of that mortgage.

Please execute the same and return to us so that we may have the American Trust & Savings bank execute the same, as both companies are trustees under the mortgage of October 22, 1889.

All the 6% bonds covered by this mortgage have been forwarded to you, with the exception of three or four, which will be forwarded for cancellation before the execution of this instrument.

Yours truly, KNIGHT & BROWN,
General Solicitors for Lake St. Road."

(Dictated. C. A. K.)

390 (Counsel for complainant thereupon offered and read in evidence a certain letter from Knight and Brown to Farmers' Loan & Trust Company, dated June 21, 1893; which said last-mentioned letter is as follows, to wit:)

"GENTLEMEN: The release deed sent by you of the Lake Street Railway Company mortgage was received during the absence of Mr. Knight from the city. He returned yesterday, and the release deed has been executed by the American Trust & Savings bank and duly filed for record. As soon as recorded we will forward the same to you.

Yours very truly, KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a certain letter from Knight & Brown to Farmers' Loan & Trust Co., dated July 5, 1893; which said last-mentioned letter is as follows to wit:)

"GENTLEMEN: We herewith enclose certified copy of resolutions adopted by the board of directors of the Lake Street Elevated Railway Company and the Lake Street Elevated Railroad Company, authorizing the cancellation and destruction of the old bonds now in your possession.

Yours very truly, KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a certain letter from Knight & Brown to Farmers' Loan and Trust Company, dated July 18, 1893; which said last-mentioned letter is as follows, to wit:)

"GENTLEMEN: Will you please send to the American Trust
391 & Savings bank of this city the list of sub-subscribers charged against the Moffett, Hodgkins & Clark Company subscription and the John F. Moffett subscription for the Lake Street bonds, and

showing the payments made on the same. The list was prepared to be filed with you as exhibit to the order charging these bonds when our Mr. Knight was in New York. The arrangement was completed by Mr. Underwood, and this list was to be filed with you. What we desire is a copy of that list and a copy of the communications to be filed with the same.

Yours very truly, KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a certain letter from Knight & Brown to Farmers' Loan and Trust Company, dated April 5, 1895; which said last-mentioned letter is as follows, to wit:)

"GENTLEMEN: A formal petition has been filed in the usual form of a petition to condemn land by The Metropolitan West Side Elevated Railroad Company *vs.* The Lake Street Elevated Railroad Company, seeking to condemn certain property on its northwest line now owned by the Lake Street Elevated Railroad Company.

We notice by the petition that The Farmers' Loan and Trust Company has been made party defendant, and you will probably receive by mail the usual formal printed notice of such suit. If so, will you please forward the same to us in order that we may know that you have been served?

We desire to make a certain formal motion in the case on
392 behalf of the Lake Street Elevated Railroad Company, and will confer with Mr. Burry in regard to entering your appearance in the case, or please direct Mr. Burry to confer with us before entering your appearance. Of course you will understand that you are made party defendant in this suit because of the fact that you are trustee under the mortgage or trust deed securing the bond.

Yours very truly, KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a certain letter from G. B. Shaw to W. D. Searles, dated June 3rd, 1895; which said last-mentioned letter is as follows, to wit:)

"DEAR SIR: We have on deposit in this bank sufficient money to meet all outstanding coupons of the Lake Street Elevated R. R. Co. which matured January 1st, 1895. Heretofore we have been requesting the bondholders to sign an agreement waiving cancellation of the coupons under certain conditions, but from and after this date we are prepared to cash them unconditionally at par.

If any of these coupons should be presented at your office you may cash the same, if you wish, and draw on us for the amount, or you may refer the holders to us and we will take care of them when presented.

Yours truly,
(Signed) G. B. SHAW, *Pr.*"

393 (Counsel for complainant thereupon offered and read in evidence a certain letter from Clarence A. Knight to D. H.

Louderback, dated July 24, 1895; which said last-mentioned letter is as follows, to wit:)

"DEAR SIR: I enclose herewith letters as agreed to yesterday, one to the American Trust & Savings bank and one to the Farmers' Loan and Trust Company, with copies of each for your files; also copies of the resolutions, one for each trust company. These copies should be certified to by Mr. Laughlin and the seal of the company attached.

I have seen Mr. Burry this morning, agent for the Farmers' Loan and Trust Company, and he says that he would advise that no notice be taken of the communication from Mr. Ziegler and his friends requesting the trust companies to act in regard to the interest matter. Mr. Shaw is not in today, so I have been unable to see him, but from his talk with me the other day I think that he will follow the course suggested by Mr. Burry.

If any matter should come up requiring my attention in New York, if you will write to me I will attend to the same. Mr. Brown will have my address from time to time. I expected to get to see you to day, but, owing to the many matters I have to attend to in order to get away, I shall not be able to do so.

In the matter of the $5,000, I will either arrange for today before I go or put it in such shape that Mr. Brown can see to it in my absence. Mr. Burry agreed with me this morn-
394 ing that he would state to the court that the trust company made no claim to this money under the mortgage. If Mr. Shaw will do the same thing there will be no difficulty in getting the money from the bank, as Mr. Gurley agreed with me yesterday that he would also consent in open court that the money might be paid over to the railroad company.

I suggested to Mr. Burry this morning, in discussing the resolutions as to the sale of the Humboldt Park line, as to whether the trust company would make any objection if we sold the right of way subject to the mortgage, and he said the trust companies would not make any objection. I see myself no objection to selling this right of way, subject to the mortgage. Of course, the party now purchasing would have a cloud resting upon the title, and if the mortgage should ever be foreclosed the court would first order the sale of the remaining portion of the company's property, and this right of way would be sold last. If, upon the sale of the remaining portion of the company's property, sufficient should be realized to pay off the indebtedness under the mortgage, then this property, of course, would be released.

It strikes me that that is really the better way out of the difficulty, and if the party is willing to take his chances upon the foreclosure of the mortgage and simply take a quitclaim deed or a special-warranty deed from the company I do not see why the property should not be sold in this way.

I have prepared a special form of warranty deed for the
395 end of the lot, for which the party was to pay $300. I herewith enclose the same, and if you wish to close this matter

before my return, if you will communicate with Mr. A. J. Petit, 94 La Salle St., who is attorney for the purchaser, Mr. Percy H. Sloan, he will pay the $300 and accept the deed.

Yours very truly, CLARENCE A. KNIGHT."

(The letters referred to in said last-mentioned letter were thereupon read in evidence by counsel for complainant and were respectively in the words and figures following, to wit:)

"JULY 24, 1895.

To the American Trust and Savings Bank of Chicago, Illinois, and the Farmers' Loan and Trust Company of New York.

GENTLEMEN: During the years of 1893 and 1894 the Lake Street Elevated Railroad Company deemed it advisable to purchase a considerable quantity of real estate for what is called its Humboldt Park Branch line. At the time the company began the purchase of this property the North Avenue, Division Street, Chicago Avenue, and the Western Avenue lines of street cars, operated by the West Division Railway Company, were operated by horse power, these lines of railroad tapping the territory through which the Lake Street Company proposed to build its line of road. In fact the line of road as laid out parallels the Western Avenue street car line within 125 feet from Lake street to a point between Division and Werder streets, a distance of about 6,920 feet. At that point it turns westwardly and parallels the Division Street surface street
396 car line for a distance of about 2,330 feet to a point between California avenue and Fairfield avenue, at which last-named point it turns northwardly and thence runs for a half a mile to North avenue, where it strikes the street car line on North avenue.

The Metropolitan Elevated Railroad Company at that time had not begun to purchase or acquire any right of way for what is called its Humboldt Park line, which leaves its Logan Square line near the point where North avenue intersects Milwaukee avenue. From that point westwardly the Metropolitan line parallels North avenue, crossing the Lake Street line so laid out between California and Fairfield avenues just north of North avenue. Since the Lake Street Company commenced to acquire this property the Metropolitan Company began also to acquire property for its Humboldt Park line, until it has now acquired all its right of way and built its structure and is substantially ready to operate its cars thereon.

From Lake street to Division street the territory is very thinly populated, and, practically speaking, it was not and could not have been expected that the line of road between Lake street and Division street would ever be able to earn its operating expenses, by reason of the sparsely settled neighborhood, and, besides, the competition which it would have with the Western Avenue street car line. Along the line of road paralleling Division street is a larger settlement. This territory, however, came into competition with
397 the Division Street line of street cars, and when you turn north and strike the North Avenue territory there was competition again with the North Avenue street car line. The North

Avenue street car line connects with the cable line on Milwaukee avenue, and would substantially land passengers in the heart of the city within about the same time that the Lake Street Company would have been able to do by its line of road from North avenue, even with the street car line using horses for its power. Since this property was acquired the West Division Railway Company has equipped the Western Avenue line, Division Street line, the North Avenue line, and the Chicago Avenue line with what is known as the trolley system. The Western Avenue line crosses the street car line on Lake street and on Madison street, at which points transfers are given over the Lake Street line and over the Madison Street cable line without additional charge to the heart of the city. The Chicago Avenue line gives transfers to the Milwaukee Avenue cable, and also runs over to Clark street, in the North division of the city, crossing the Wells Street cable line. Transfers are likewise given over the Wells Street cable and the Clark Street cable down to the heart of the city. The Division Street line gives transfers and connects with the main tracks; also the Chicago Avenue line. The North Avenue line, as already stated, gives transfers on Milwaukee Avenue cable, and over the main lines of the heart of the city they are given by the Chicago Avenue and Division Street lines.

These various street car lines and the Metropolitan line
398 furnish all the transportation facilities now required or that will be required for a good many years to come for the territory covered by the Humboldt Park line so laid out.

As is well known to the different companies operating intramural transportation lines, the operation of such a line of cars by electricity can be accomplished at a much less expense than by any other practical known power, either horse or steam. The Metropolitan Elevated Railroad Company has already adopted and is using what is known as the third-rail system to operate its cars; the Northwestern Elevated Railroad Company, which is building an elevated railroad through the North division of the city, has adopted electricity as its motive power, and the Chicago and South Side Rapid Transit Company, known as the Alley road, also proposes to adopt electricity as its motive power. It has also been agreed with the property-owners in the downtown district of the city of Chicago that the loop to be used by all the elevated railroads would use as its motive power electricity.

In view of the facts, as stated, it was the unanimous judgment of the board of directors of the Lake Street Elevated Railroad Company that it would be for the best interests of the company to sell and dispose of this right of way for its Humboldt Park line and use the money to be obtained therefrom for the purpose of equipping the road electrically, thus avoiding additional issue of bonds, and also disposing of an unprofitable piece of property, as, to
399 equip the road electrically, it would either be necessary to issue additional bonds or to incur additional indebtedness. Therefore, on the 16th of July, at a meeting of the board of directors, a resolution was unanimously adopted, a copy of which is herewith submitted, providing for the sale of this Humboldt Park right of

way, and which provides that the proceeds arising from the sale of such property shall be applied to the purchase of other property or with equipping the present line of road with electricity or in extending or adding to the present line of elevated railroad.

To build the Humboldt Park line of railroad as laid out down to North avenue would require an investment of about one hundred and fifty thousand dollars for the purpose of securing additional right of way and paying encumbrances upon the present right of way and preparing the same to place the structure thereon. In addition to that, it would require the expenditure of a large sum of money for the purpose of building the structure and the foundations and in equipping the same with necessary locomotives and cars, which would cost, in addition to the right of way as mentioned, a sum of somewhere in the neighborhood of five hundred thousand dollars, all of which would add to the bonded indebtedness of the company.

We therefore desire that the trustees shall take such action under these resolutions as will enable the company to sell and dispose of this Humboldt Park right of way and apply the proceeds provided for in the resolution. We respectfully submit that the action
400 of the company should be approved by the trustees under the mortgage of April 7, 1893.

Respectfully,

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By D. H. LOUDERBACK, *President.*

JULY 24, 1895.

To the American Trust and Savings Bank of Chicago, Illinois, and the Farmers' Loan and Trust Company of New York.

GENTLEMEN: During the years of 1893 and 1894 the Lake Street Elevated Railroad Company deemed it advisable to purchase a considerable quantity of real estate for what is called its Humboldt Park Branch line. At the time the company began the purchase of this property the North Avenue, Division Street, Chicago Avenue, and the Western Avenue lines of street cars, operated by the West Division Railway Company, were operated by horse-power, these lines of railroad tapping the territory through which the Lake Street Company proposed to build its line of road. In fact, the line of road as laid out parallels the Western Avenue street car line within 125 feet from Lake street to a point between Division and Werder streets, a distance of about 6,920 feet. At that point it turns westwardly and parallels the Division Street surface street car line for a distance of about 2,330 feet to a point between California avenue and Fairfield avenue, at which last-named point it turns northwardly and thence runs for a half a mile to North avenue, where it strikes the street car line on North avenue.

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Square line near the point where North avenue intersects Milwaukee avenue. From that point westwardly the Metropolitan line parallels North avenue, crossing the Lake Street line so laid out between California and Fairfield avenues, just north of North avenue. Since the Lake Street Company commenced to acquire this property the Metropolitan Company began also to acquire property for its Humboidt Park line, until it has now acquired all its right of way and built its structure and is substantially ready to operate its cars thereon.

From Lake street to Division street the territory is very thinly populated, and, practically speaking, it was not and could not have been expected that the line of road between Lake street and Division street would ever be able to earn its operating expenses by reason of the sparsely settled neighborhood and, besides, the competition which it would have with the Western Avenue street car line. Along the line of road paralleling Division street is a larger settlement. This territory, however, come- into competition with the Division Street line of street cars, and when you turn north and strike the North Avenue territory there was competition again with the North Avenue street car line. The North Avenue street car line connects with the cable line on Milwaukee avenue and would substantially land passengers in the heart of the city within
402 about the same time that the Lake Street Company would have been able to do by its line of road from North avenue, even with the street car line using horses for its power. Since this property was acquired the West Division Railway Company has equipped the Western Avenue line, the Division Street line, the North Avenue line, and the Chicago Avenue line with what is known as the trolley system. The Western Avenue line crosses the street car line on Lake street and on Madison street, at which points transfers are given over the Lake Street line and over the Madison Street cable line, without additional charge, to the heart of the city. The Chicago Avenue line gives transfers to the Milwaukee Avenue cable, and also runs over to Clark street, in the North division of the city, crossing the Wells Street cable line. Transfers are likewise given over the Wells Street cable and the Clark Street cable down to the heart of the city. The Division Street line gives transfers and connects with the main tracks; also the Chicago Avenue line. The North Avenue line, as already stated, gives transfers on Milwaukee Avenue cable, and over the main lines to the heart of the city they are given by the Chicago Avenue and Division Street lines.

These various street car lines and the Metropolitan line furnish all the transportation facilities now required or that will be required for a good many years to come for the territory covered by the Humboldt Park line so laid out.

As is well known to the different companies operating intra-
mural transportation lines, the operation of such a line of
403 cars by electricity can be accomplished at a much less expense than by any other practical known power, either horse or steam. The Metropolitan Elevated Railroad Company has

already adopted and is using what is known as the third-rail system to operate its cars. The Northwestern Elevated Railroad Company, which is building an elevated railroad through the North division of the city, has adopted electricity as its motive power, and the Chicago and South Side Rapid Transit Railroad Company, known as the Alley road, also proposes to adopt electricity as its motive power. It has also been agreed with the property-owners in the down-town district of the city of Chicago that the loop to be used by all the elevated railroads would use as its motive power electricity.

In view of the facts as stated, it was the unanimous judgment of the board of directors of the Lake Street Elevated Railroad Company that it would be for the best interests of the company to sell and dispose of this right of way for its Humboldt Park line and use the money to be obtained therefrom for the purpose of equipping the road electrically, thus avoiding additional issue of bonds and also disposing of an unprofitable piece of property, as to equip the road electrically it would either be necessary to issue additional bonds or to incur additional indebtedness. Therefore, on the 16th of July, at a meeting of the board of directors, a resolution was unanimously adopted, a copy of which is herewith submitted, providing for the sale of this Humboldt Park right of way, and
404 which provides that the proceeds arising from the sale of such property shall be applied to the purchase of other property, or with equipping the present line of road with electricity, or in extending or adding to the present line of elevated railroad.

To build the Humboldt Park line of railroad as laid out down to North avenue would require an investment of about one hundred — fifty thousand dollars for the purpose of securing additional right of way and paying encumbrances upon the present right of way and preparing the same to place the structure thereon. In addition to that, it would require the expenditure of a large sum of money for the purpose of building the structure and the foundations and in equipping the same with necessary locomotives and cars, which would cost, in addition to the right of way as mentioned, a sum of somewhere in the neighborhood of five hundred thousand dollars, all of which would add to the bonded indebtedness of the company.

We therefore desire that the trustees shall take such action under these resolutions as will enable the company to sell and dispose of this Humboldt Park right of way, and apply the proceeds as provided for in the resolution. We respectfully submit that the action of the company should be approved by the trustees under the mortgage of April 7, 1893.

Respectfully, THE LAKE STREET ELEVATED RAILROAD COMPANY,
By D. H. LOUDERBACK, *President.*"

405 (Counsel for complainant thereupon offered and read in evidence a certain letter dated November 12, 1895, from Messrs. Knight & Brown to Farmers' Loan & Trust Company; which said last-mentioned letter was in the words and figures following, to wit:)

"GENTLEMEN: Yours of the 29th ult. in reference to the reorganization committee of the Lake Street road was duly received, but owing to our engagements in loop matters it escaped the attention of our Mr. Knight.

We have forwarded your request to Messrs. Turner, McClure & Rolston, attorneys for the Farmers' Loan & Trust Company.

Yours very truly,

(Signed) MESSRS. KNIGHT & BROWN."

406 (Counsel for complainant thereupon offered and read in evidence a certain letter from Messrs. Knight & Brown to Messrs. Turner, McClure & Rolston, dated December 13, 1894; which said last-mentioned letter is as follows, to wit:)

"GENTLEMEN: Under the Lake Street Elevated Railway Company mortgage application was made to the Farmers' Loan and Trust Company to certify to a certain number of bonds heretofore called for under resolutions passed by the board of directors of said company. Under those resolutions the Farmers' Loan and Trust Company held that it could not issue bonds only to the face of the various expenditures, and therefore only issued about one-half of the number of bonds called for under the various resolutions.

Among other calls made, a call was made, under clause D of the mortgage, to pay for interest due July 1, 1894. Under this clause the trust company only certified and issued forty-four bonds. These forty-four bonds were sold and $22,880 realized from the sale thereof, leaving a deficiency of $21,120 of interest due July 1, 1894. The company was obliged to and did borrow, on its own personal security, the $21,120 in order to pay this deficiency, and a like course was pursued in reference to other bonds certified under other calls made from time to time.

The company was obliged, in order to meet the deficiency arising by reason of the failure of the trust company to certify the
407 number of bonds required, to borrow bonds from some of its large bondholders, and also to use treasury bonds, and these bonds so borrowed and the treasury bonds were put up as collateral security for the money borrowed to pay the various deficiencies.

The company, on January 1, 1895, will again be called upon to provide for a deficiency in the interest then coming due, and for this interest it must also have certified and issued additional bonds. If it cannot have sufficient bonds certified and issued so as to be sold upon the market at the best market price to meet this deficiency in interest, it has no way to meet the same unless it can also borrow more bonds from other large bondholders who have sufficient interest in the company to protect it from foreclosure.

This condition, as you will see, is such that it leaves open to us only two courses to pursue. The trust company will have to recede from its position of issuing only bonds for the face amount of the liability or else resign and permit some other trustee to be appointed who will place the construction upon the mortgage which the company places upon it and which was intended when the mortgage was made by the company.

We desire to call your attention to some of the provisions in the mortgage for the purpose of asking the trust company to recede from its position.

The resolutions, as shown in the mortgage, passed by the stockholders and directors of the company (see page 1 of the
408 printed copy of the mortgage), recites that there is existing against the railway company a bonded indebtedness, and the railway company has contracted for the construction and equipment of its elevated railroad, and that it is now necessary for the railway company to issue its bonds and borrow money for the purpose of redeeming the bonded indebtedness and for the purpose of constructing and completing its road, and then provides, 'also from time to time for the following purposes, namely;' then recites five different purposes—or, in other words, it provides that it is necessary to issue its bonds and borrow money from time to time for the purposes above named. Now, to issue bonds is to put them out upon the market and borrow money with them. That is the purpose and intent of the resolution, and when the company issues its bonds and borrows money for the purposes stated it can only issue its bonds and borrow the money upon the best price to be obtained.

And further on the resolutions provide that the company has 'resolved to borrow money for said purposes and issue and dispose of its mortgage bonds therefor.'

Here are three things to be done: First, to borrow money for the purposes; second, issue its mortgage bonds; third, dispose of its mortgage bonds—or, in other words, its purpose, as expressed in these resolutions, is to borrow money by disposing of its bonds. Its bonds are nothing but its notes. It proposes to take its notes
409 or its bonds, have them signed and certified as provided in the mortgage, and then go upon the market and dispose of them. It does not mean that it shall dispose of them at their face value, because from the very beginning and inception of the road and at the time of the making of the mortgage the bonds did not sell for their face and never have, and therefore when the mortgage was drawn and this provision was provided for the company and the stockholders knew that it could only 'dispose' of these bonds at the best price to be obtained, and at that time that was not the face of the bonds.

And it further provides that these bonds 'so to be issued' are to be secured by a mortgage, then provides for the making of the mortgage.

In the habendum clause of the trust deed it provides that no bonds shall have priority over any other bonds 'by reason of priority in the time of issue or the negotiation thereof or otherwise,' still further showing that there is to be a negotiation of these bonds.

Further on in the mortgage, where it provides for the certifying the same, it is provided that no bonds in addition to sixty-five hundred shall be certified by the trustees 'except as hereinafter provided.' It then provides, after reciting the various purposes for

which the sixty-five hundred bonds are to be used, 'Bonds may be issued in addition to the sixty-five hundred for the following purposes;' then provides for the five purposes heretofore specified—1st, in adding to the railroad; 2nd, in adjusting claims for damages; 3rd, procuring right of way; 4th, paying interest, and 5th, for a railroad bridge. As to the 5th there is now no necessity, nor will there be any necessity, for exercising the privilege under that clause.

After reciting the five purposes it then provides that the bonds in addition to the sixty five hundred are only to be issued by a resolution of the board of directors that additional bonds are required for the purposes set forth—that is, for the five purposes set forth.

It then provides, 'and the proceeds from the sale of said bonds shall only be used for the purposes therein set forth, and for no other.' This clear cut language, it seems to me, shows that there was to be a sale of these bonds so issued for additional purposes, and when the directors and stockholders passed the resolutions, and when the mortgage was issued, and when the purchasers bought bonds under this mortgage, they bought them with the clause and provision that the sale of these bonds, so issued in addition to the sixty-five hundred, were to be sold, and the only limitation was that the 'proceeds' from such sales should only be used for the purposes for which they were issued, and no other.

There is no provision that the bonds shall be sold at their face value or at par; but the provision is that the proceeds from the sale of the bonds—that is, whatever sum is realized by the company from the sale of the bonds—will be the proceeds, and these proceeds shall be used for the purposes specified, and no other. Now, under that provision the company is entitled to have issued from time to time sufficient bonds that it may sell until the proceeds shall be sufficient to pay for the various additional things for which bonds may be issued; otherwise the additional things never could be accomplished. The company could not obtain its right of way for additional lines of road, excepting by the sale of bonds and using the proceeds for the purpose of securing such additional rights of way. As an illustration, the company has actually expended and bought property to the extent of $500,000, for which it holds deeds for what is known as its Humboldt Park line. How can the company pay this $500,000, excepting by issuing and disposing of its bonds as provided in the mortgage until it shall have realized a sufficient sum of money to pay this $500,000? When the $500,000 is paid every bondholder and the company receives a benefit of such investment. It has acquired so much additional property.

The mortgage further provides that the certificate of the president and chief engineer as to the existence of the facts calling for the issue of additional bonds shall be sufficient and conclusive evidence to the trustees, and shall protect the trustees with respect to certifying and delivering said bonds, and no duty is imposed upon the trustees to look behind the same or any part thereof.

412 In the case of Hanley *v.* Stutz, 139 U. S., 417, it was held that the law did not require a company desiring to increase its capital stock to sell the same for par, but that if its capital stock was increased it was only bound to obtain the market price for the same, and the court in that case said:

'To say that a corporation may not, under the circumstances above indicated, put its capital stock upon the market and sell it to the highest bidder is practically to declare that a corporation can never increase its capital stock by a sale of shares if the original stock has fallen below par.'

The language used in that case and the whole decision bears out our contention in this matter. In the Handly case the stock of the corporation in question had fallen below par, and the Supreme Court said it was not necessary, nor did the law require the corporation, in order to save itself from insolvency, to do more than sell its increased capital stock at the market price. To do otherwise, the court said, would be simply a prohibition against any increase of capital stock at all.

So, in this matter, to hold that the company cannot issue its bonds and dispose of the same at the market price, and use the proceeds for the purposes specified, is simply to prohibit it substantially from carrying out the purposes specified in the mortgage, for it is utterly impossible to obtain par for the bonds, much to the regret of the company.

413 In view of the situation, we think it is no more than fair and just, if the trust company does not agree with our construction in this matter, that it should resign the trust and allow another trustee to be appointed in its stead. The trust company was selected by the elevated railway company in the belief that it had the right to issue and dispose of the mortgage bonds under the trust deed and use the same for the purposes specified, and now for the trust company to hold otherwise simply cripples the company, so that it is impossible for it to carry out the objects and purposes specified in the resolutions of the stockholders and directors and recited in the mortgage.

We will be pleased to have you endeavor to have the trust company give us an immediate answer in regard to this matter. The interests involved are very large, and we hope you will give the matter your most earnest and careful consideration, with the view of adjusting the difficulties under which we are laboring.

Very truly, KNIGHT & BROWN,
Gen'l Sol'rs Lake St. 'L' Road."

414 (Counsel for complainant thereupon offered and read in evidence a certain letter dated December 20th, 1894, from Clarence A. Knight to Herbert B. Turner; which said last-mentioned letter was in the words and figures following, to wit:)

"DEAR SIR: I am very anxious to meet you before your return East in regard to our Lake Street matters. I called at the hotel last night with Mr. Louderback, president of the road, to have a talk with you, but find you did not return.

Will you please let me know upon receipt of this where we can see you, or call up my office by telephone, Main 4853.

Yours very truly,

(Signed) CLARENCE A. KNIGHT."

(Counsel for complainant thereupon offered and read in evidence a certain letter dated January 15th, 1895, from Messrs. Knight & Brown to Messrs. Turner, McClure & Rolston; which said last-mentioned letter was as follows, to wit:)

"GENTLEMEN: There will of necessity be a number of pieces of property to be released under the trust deed and mortgage of the Lake Street Elevated Railroad Company. One piece of property has already been sold, as shown by the form of resolutions herewith submitted. Other pieces will be sold from time to time.

We desire that you shall pass upon the resolutions and papers as herewith submitted and approve of the same if they are satisfactory to you; if not, make such changes as in your judgment *is* necessary, so that we may adopt the same as a permanent form for a re-
415 lease of such property. The release deed herewith enclosed is a copy of the release deed which you gave of the old mortgage of the Lake Street Elevated Railway Company.

The property now in question was purchased, together with another piece of property, from the same owner. One of the pieces is retained by the railroad company for its right of way. This piece which has been sold is not necessary or required for that purpose, and by making a slight change in its line of road it can avoid interfering with this property.

We think that the company has made a good sale of this piece of property, and desire to obtain the funds so as to be used to pay on account of other purchases along the same right of way.

We are considering your letter of December 22nd, 1894, in order to determine what action we think advisable in the premises.

We are very sorry that you concluded not to resign from this trust in order to work out our salvation, but time cures many things, and we suppose that time will cure the difficulties under which we are laboring with you. If we had received the bonds as desired we think the company would not be in the position that it is in today, and matters could have been solved much earlier than they will be.

Yours very truly,

(Signed) KNIGHT & BROWN."

416 (Counsel for complainant thereupon offered and read in evidence a certain letter dated July 24th, 1895, from Messrs. Knight & Brown to Messrs. Turner, McClure & Rolston; which said last-mentioned letter was as follows, to wit:)

"GENTLEMEN: Will you please let us know when your Mr. Turner returns from his trip abroad, as our Mr. Knight, who is in the East

on his vacation, desires to see him in regard to matters concerning the Lake Street Elevated Railroad Company.

Yours very truly,
(Signed) KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a certain letter dated Sept. 12, 1895, from Messrs. Knight & Brown to Messrs. Turner, McClure & Rolston; which said last-mentioned letter was in the words and figures following, to wit:)

"GENTLEMEN: Our Mr. Knight having returned from his vacation, will you please respond to our letter to you of August 28th, in regard to release of the Humboldt Park line?

Yours very truly,
(Signed) KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a certain letter dated Oct. 18th, 1895, from Messrs. Knight & Brown to Messrs. Turner, McClure & Rolston; which said last-mentioned letter was as follows, to wit:)

"DEAR SIRS: Yours of the 15th inst. at hand and contents noted. By mistake the letter of the 18th inst. was addressed to the Farmers' Loan & Trust Company, instead of the American Trust & Savings bank.

417 The letter which we sent to you was not intended for the Northern Trust Company. We enclosed a letter from the American Trust & Savings bank which requested us to transmit to them the original documents, instead of copies, claiming that as they were trustees they were entitled to the original documents. The original documents we sent to you October 28th, 1895.

Will you please look at the letter from the American Trust & Savings bank dated October 29, 1895, and take such action as you think advisable with reference thereto? It is immaterial to us who has the originals, and if you are satisfied that the American Trust & Savings bank should keep the originals here and you have the copies we have no objection. This is a matter the trust companies must settle between themselves.

Yours very truly,
(Signed) KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a certain letter dated October 19th, 1895, from Messrs. Knight & Brown to Messrs. Turner, McClure & Rolston; which said last-mentioned letter was as follows, to wit:)

"GENTLEMEN: Yours of the 17th inst. in reference to Mr. Ziegler's request duly received.

We are pleased to hear that you declined to comply with the request of Mr. Ziegler. We think that you are fully justified

418 in so doing.

We are having a document signed by the committee of bondholders here and by the Northern Trust Company which will

show that your action is in accordance with the desires of the holders of nine-tenths of the bonds now out.

Yours very truly,

(Signed) KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a certain letter dated October 28th, 1895, from Messrs. Knight & Brown to Messrs. Turner, McClure & Rolston; which said last-mentioned letter was as follows, to wit:)

"GENTLEMEN: In accordance with the understanding with our Mr. Knight when he was in New York, we herewith send to you a request signed by the holders of sixty-five hundred and sixty-eight (6,568) of the Lake Street bonds.

Yours very truly,

(Signed) KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a certain letter dated Nov. 12th, 1895, from Messrs. Knight & Brown to Messrs. Turner, McClure & Rolston; which said last-mentioned letter was as follows, to wit:)

"GENTLEMEN: We herewith enclose letter from the American Trust & Savings bank of this city, together with the copies referred to therein, which will explain itself.

Yours very truly,

(Signed) KNIGHT & BROWN."

419 (Counsel for complainant thereupon offered and read in evidence a letter from Messrs. Knight & Brown to William Burry, Esq., dated October 8, 1894; which said last-mentioned letter is in the words and figures as follows, to wit:)

"OCTOBER 8, 1894.

William Burry, Esq., 806 The Temple, city.

DEAR SIR: The ordinance passed September 24th authorizing the Lake Street Elevated Railroad Company to build an elevated railroad upon Lake street from Market street east was vetoed by the mayor on October 1, 1894, and reconsidered and passed on October 1st. The ordinance was accepted by the company and the bond filed on October 3rd. The company immediately made application for a permit to proceed with the work of construction under that ordinance. On October 5th permit was granted by the commissioner of public works, and the company is now proceeding with the work of construction upon Lake street.

If you desire, we will send you a copy of the bond and acceptance under the ordinance.

Yours very truly, KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a letter from Messrs. Knight & Brown to Messrs. Runnells & Burry, dated April 24, 1895; which said last-mentioned letter is as follows, to wit:)

420 "APRIL 24, 1895.

Messrs. Runnells & Burry, # 184 La Salle St., city.

DEAR SIR-: Yours of the 23rd inst. at hand in reference to the Metropolitan 'L' case.

Since you wrote the same our Mr. Knight conferred with your Mr. Burry, as you will remember.

We will notify you of any steps taken in the Ziegler suit.

Yours very truly, KNIGHT & BROWN."

(Dictated.)

(Counsel for complainant thereupon offered and read in evidence a letter from Messrs. Knight & Brown to Messrs. Runnells & Burry, dated May 7, 1895; which said last-mentioned letter is as follows, to wit:)

"MAY 7, 1895.

Messrs. Runnells & Burry, attorneys at-law, 184 La Salle St., city.

GENTLEMEN: Your favor of the 4th inst. received and noted. Enclosed herewith we hand you copy of motion to dismiss the case of Metropolitan West Side Elevated Railroad Company *vs.* The Lake Street Elevated Railroad Company.

421 We think it would be wise for you to file a similar motion on behalf of your clients in this case.

Please return this copy to us when you are through with it, as it appears to be our only office copy.

Yours very truly, KNIGHT & BROWN."

(Dictated.)

(Counsel for complainant thereupon offered and read in evidence a letter from Messrs. Knight & Brown to Mr. William Burry, dated May 22, 1895; which said last-mentioned letter is as follows, to wit:)

"MAY 22, 1895.

Mr. William Burry, # 806 The Temple, city.

DEAR SIR: In the case of Ziegler *vs.* The Lake Street Road, in the U. S. court, I wish to inform you that on Monday afternoon we called up for disposition the demurrer which we had filed to the bill on the Saturday before. We got as far as reading the original bill. The court then adjourned the further hearing until Saturday next at 10 o'clock a. m.

How far the court will consider the motion for the appointment of a receiver or an injunction we cannot say. We think, however, the court will not consider the question appointing a receiver or for an injunction until after the answer has been filed. We think the court will dispose of the case upon demurrer and are firmly

422 of the belief that the bill is demurrable, and the court cannot do otherwise than sustain the demurrer.

Yours very truly, KNIGHT & BROWN."

(Dictated.)

(Counsel for complainant thereupon offered and read in evidence a letter from Messrs. Knight & Brown to Messrs. Runbels & Burry, dated July 15, 1895; which said last-mentioned letter is as follows, to wit:)

"JULY 15, 1895.

Messrs. Runnells & Burry, city.

GENTLEMEN: Yours of the 13th inst., in reference to the 11th covenant of the Lake Street mortgage in connection with the Metropolitan Elevated Railroad Company, duly received and contents noted. We will see you in the course of a few days in regard to this matter.

Yours very truly, KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a letter from Messrs. Knight & Brown to Messrs. Runnels & Burry, dated December 30, 1895; which said last-mentioned letter is as follows, to wit:)

423 "DECEMBER 30, 1895.

Messrs. Runnells & Burry, attorneys for the Farmers' Loan & Trust Co., The Temple, city.

GENTLEMEN: We are informed that application has been made to the Farmers' Loan and Trust Company, as trustees under the mortgage of the Lake Street Elevated Railroad Company, on behalf of William Ziegler and others, that the trustees should take some action thereunder. We desire that you shall furnish us, as attorneys for the Lake Street Elevated Railroad Company, copies of all papers submitted to you in regard to said matter, in order that we may have an opportunity to answer any fact or matter therein set forth.

Yours very truly, KNIGHT & BROWN,
Attorneys for Lake Street 'L' Road."

(Counsel for complainant thereupon offered and read in evidence a letter from Messrs. Knight & Brown to Messrs. Runnells & Burry, dated January 4, 1896; which said last-mentioned letter is as follows, to wit:)

"JANUARY 4, 1896.

Messrs. Runnells & Burry, The Temple, city.

GENTLEMEN: We herewith enclose statement in the matter
424 of application of Mr. Ziegler and others to the trustees under the Lake Street mortgage.

We have forwarded copy of the same to the Farmers' Loan and Trust Company. If you desire any further information or any further fact, please let us know and we will furnish the same.

Yours very truly, KNIGHT & BROWN."

(Counsel for complainant thereupon offered and read in evidence a letter from Knight & Brown to William Burry, Esq., dated Jan-

uary 29, 1896; which said last-mentioned letter is as follows, to wit:)

"William Burry, Esq., c. o. Runnells & Burry, city.

DEAR SIR: We herewith enclose request for release of certain property by the Lake Street Elevated Railroad Company; also a form of release, which we should like executed by the two trust companies. We also enclose estimate as to the value of this property made by competent real-estate dealers. In addition to this, we would say for your information that Mr. Shaw also obtained an estimate as to the value of this property, which places the same at about what our appraisers have made it.

We would be pleased to have you give us immediate answer upon this matter, as we desire to close the transaction.

Yours very truly, KNIGHT & BROWN."

425 I understand, Mr. Burry, from your answer you admit that you never have made this deposit with the State auditor.

Mr. BURRY: Yes; it is very plain in the answer, I think.

Mr. KNIGHT: Mr. Judah seems to think that you do not very clearly state the admission of that fact, and, if your honor please for that purpose I will offer in evidence a certificate by the State, auditor as to the fact that none was made by the Farmers' Loan & Trust Company.

Mr. BURRY: Objected to as incompetent; a public officer cannot state what is not in his hands.

The COURT: Well, let the record show the admission of that fact. That is all that you need to do.

Mr. KNIGHT: We also offer in evidence a copy of the bill of foreclosure filed by The Farmers' Loan & Trust Company against The Lake Street Elevated Railroad Company in the United States court on January 30th, 1896.

Mr. BURRY: Being the bill of foreclosure referred to in our answer.

Mr. KNIGHT: Yes, sir; and also a copy of the amended bill filed in that same case.

We offer in evidence a subpœna issued in the same cause on the 30th of January, 1896, and the marshal's return on said subpœna.

426 Said last-mentioned papers, to wit, said bill of foreclosure and said amended bill of foreclosure filed by the Farmers' Loan & Trust Company against The Lake Street Elevated Railroad Company in the United States circuit court on January 30, 1896, and said subpœna issued in said cause on the 30th day of January, 1896, and said marshal's return on said subpœna were thereupon read in evidence by counsel for complainant and were respectively as follows, to wit:

"*Bill.*

"General No., 23995; Term No., 724.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

To the honorable judges of said court, in chancery sitting:

The Farmers' Loan & Trust Company, a corporation duly created by and under the laws of the State of New York, brings this its bill of complaint against The Lake Street Elevated Railroad Company, The Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, The West Chicago Street Railroad Company, and The American Trust & Savings Bank, all of whom are corporations organized under the laws of the State of Illinois
427 and having their principal office in the city of Chicago, in said northern district.

And thereupon your orator complains and shows that:

1. Your orator is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and as such corporation is fully authorized and empowered to hold in trust the property conveyed to it in trust, as hereinafter fully set forth, and to execute the trusts reposed in it under and by virtue of the mortgage or deed of trust hereinafter described.

2. The defendants are all corporations organized and existing under and by virtue of the laws of the State of Illinois, and said Lake Street Elevated Railroad Company, hereinafter called the Lake Street Company, is organized for the purpose of constructing, maintaining, and operating a railroad from a point at or near the east end of Lake street, in the city of Chicago, in said county of Cook, in a westerly direction upon or near said Lake street and extensions thereof to the west line of said county of Cook, together with such feeders, loops, switches, and branch lines as its board of directors may deem advisable, and has its principal office and place of abode in the city of Chicago aforesaid.

3. On or about the 7th day of April, A. D. 1893, by due and lawful action of its stockholders and board of directors, at meetings duly convened according to law, in said city of Chicago, the
428 said Lake Street Company determined to make and issue its first-mortgage bonds to the amount of $6,500,000, and to such further amount as should be thereafter issued under the provisions of said mortgage for extensions and additions to its then existing property, payable at the American Trust & Savings bank in said city of Chicago or at the Farmers' Loan & Trust Company in the city of New York, in the State of New York, on the first day of July, A. D. 1928, in gold coin of the United States of America, bearing interest at the rate of five per cent. per annum, payable in like gold coin semi-annually on the first days of January and July in each and every year until said principal sum should be fully paid

according to the tenor of the coupons or interest warrants thereunto annexed, free from any and all taxes levied by any authority, numbered consecutively from one upwards, each of said bonds to be duly executed under the seal of said Lake Street Company, signed by its president and attested by its secretary, and the interest coupons to be authenticated with the engraved signature of its treasurer, and in order to secure the payment of the principal and interest of said bonds equally and ratably, without priority or discrimination, irrespective of the date of the issue of the same, the said defendant, Lake Street Company, by due action of its stockholders and directors at their said meetings, determined to execute a mortgage or deed of trust to your orator and said American Trust & Savings bank as trustees, conveying to them all the rail-
429 way property, corporate rights, franchises, and other property of said Lake Street Company, the said mortgage or deed of trust to contain all and singular the covenants, provisos, and conditions set forth in the mortgage or deed of trust hereinafter recited.

4. Thereupon and on or about the 7th day of April, A. D. 1893, said defendant, Lake Street Company, to secure the payment of the said bonds and interest thereon so to be issued as above stated, being thereunto by law duly authorized and in accordance with said action of its stockholders and board of directors, executed, acknowledged, and delivered to your orator and said American Trust and Savings bank as trustees its certain mortgage or deed of trust, dated that day, therein and thereby conveying and transferring to your orator and said bank and to their successors and assigns forever all said property and premises; which mortgage or deed of trust was in the words and figures following, to wit:

(Here follows a copy of the mortgage or trust deed, which is attached to the bill of complaint in this case and admitted by the answers herein.)

5. The said mortgage or deed of trust was and is the proper act and deed of said defendant, The Lake Street Company, by it authorized, made, and delivered in all respects and conformity with law, and the same was duly recorded in the office of the recorder, in Book 4256 of Records, at page 230, and was also recorded in
430 the office of the secretary of state of Illinois on the 11th day of May, A. D. 1893, and recorded in Book 12 of Railroad Records, at page 266. The trusts therein and thereby created were duly accepted by your orator before the recording of the said deed of trust, as aforesaid.

6. The said defendant, The Lake Street Company, thereupon being thereunto by law duly authorized and in conformity with the terms of said trust deed, on or about the 7th day of April, A. D. 1893, executed, issued, and delivered to your orator and said bank its certain sixty-five hundred first-mortgage bonds, secured by said deed of trust, dated that day, each for the sum of $1,000, and aggregating the sum of $6,500,000, of interest, and bearing number from one to sixty-five hundred, inclusive. The said bonds were by your orator and said bank duly certified in accordance with the pro-

visions of said trust deed, and have been issued and sold or transferred for a valuable consideration and are now outstanding in the hands of holders for value. The said bonds so issued as aforesaid were made payable on the first day of July, A. D. 1928, with interest thereon from January 1st, A. D. 1893, at the rate of five per cent. per annum, payable semi-annually, on the first days of January and July in each year, on the presentation and surrender of the coupons annexed thereto as they severally became due.

7. Subsequently and in accordance with the provisions of said trust deed there was executed by said defendant on account
431 of the construction of additional railroad and branches and acquiring the same, under the clause of said deed providing for the issue of $850,000 of bonds for each mile of fully equipped double-track road, and for the purpose of settling suits for damages against said Lake Street Company, and for procuring right of way for extending its railroad, and for paying deficit of interest in the first two years' operation of said railroad after acceptance from the contractors, as is in and by said trust deed provided, ten hundred and seventy-five bonds, aggregating the sum of $1,075,000. Said ten hundred and seventy-five additional bonds were in like manner by your orator and said bank certified in accordance with the terms of said trust deed to be issued under the provisions thereof, and have all been delivered to said Lake Street Company and by it issued and sold or disposed of for valuable considerations, and are now outstanding in the hands of holders for value.

8. The total number of bonds issued and outstanding for value, in accordance with the terms of said mortgage is, therefore, to the best information and belief of your orator, seven thousand five hundred and seventy-five, of the par value of $7,575,000. Said Lake Street Company paid the coupons on said bonds which matured on the first day of July, A. D. 1893, and on the first days of January and July, 1894. Of the interest coupons maturing January 1st, 1895, attached to the bonds issued as aforesaid, less than one-
432 third have been paid and cancelled, two-thirds thereof are now in the hands of said American Trust & Savings bank uncancelled, and it is claimed that said two-thirds are still outstanding and unpaid. Default has been made by the Lake Street Company in the payment of all interest coupons payable on the first day of July, A. D. 1895, and on the first day of January, A. D. 1896, which were attached to all of said bonds which have been issued and are outstanding, as aforesaid, and all interest on all of said bonds due on said July 1st, A. D. 1895, and January 1st, 1896, remains overdue and unpaid. Demand was duly made for the payment of certain of said coupons as they matured, at the places appointed for the payment thereof, and payment of the same was refused. By reason of the matters and things hereinbefore alleged, there is due to the said trustees under the aforesaid deed of trust all of said matured and unpaid coupons. The owners of the bonds so issued as aforesaid and of said defaulted coupons are numerous, and the names and residences of many of them are unknown to your orator.

9. Your orator is informed and believes, and therefore charges, that said Lake Street Company is insolvent and wholly unable to pay its debts and obligations; that the property and premises on which said deed of trust is a lien are very inadequate security for the payment of said bonds and overdue coupons; that part of the right of way of said Lake Street Company purchased by it, and on account of which many of said bonds are issued, has been
433 abandoned as a right of way, and has become useless to said Lake Street Company for the purposes for which it was incorporated; that part of the completed road of said Lake Street Company, being that part of Lake street extending from Market street to Wabash avenue, in the city of Chicago, has been leased to said Union Elevated Railroad Company for a long term of years, and that the rental therefore is all payable in advance, and a considerable part thereof has already been paid, and that said mortgaged property and premises are so situated and are of such a nature that they cannot, nor can any part thereof, be sold in parcels without great injury to the interest of the holders of the bonds and coupons aforesaid. Your orator is advised and charges, that pending this suit and until a foreclosure sale can be had herein and the proceeds thereof distributed, it is expedient and necessary that the franchises, property, premises, and appurtenances so mortgaged, as aforesaid, and all the rights, franchises, and property of the said Lake Street Company of whatever name, nature, and description, including all its money on hand and the earnings of the same, be placed in the hands of a receiver appointed herein by this court, with such proper powers and control over the same as to the court shall seem right and equitable.

10. Said defendants, The Union Elevated Railroad Company, The West Chicago Street Railroad Company, and The Northwestern Elevated Railroad Company, claim to have acquired some
433½ interest by lease or otherwise in and to the property conveyed by said mortgage, but your orator charges that if they have any such interest they acquired the same subsequent and subordinate to the lien of the said mortgage, and any and all rights of said Union Elevated Railroad Company, the West Chicago Street Railroad Company, and said Northwestern Elevated Railroad Company in and to any part of said property are subordinate to the lien of said mortgage.

11. Your orator has requested said American Trust & Savings bank, named as cotrustee with your orator in said mortgage, to join with it as complainant in this bill of foreclosure, but said American Trust & Savings bank has declined and refused so to do or to take any action in the premises, and your orator has therefore made it a party defendant to this bill of complaint.

In consideration whereof and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable—

And to the end that the said defendants may true, full, direct, and proper answers make to all and singular the premises (but not

under oath, their answers under oath being hereby expressly waived), and that as fully and particularly as if the same were here repeated and they and each of them specially interrogated
434 thereunto; that pending this suit a receiver may be appointed in this cause of all and singular the rights, franchises, and property of every name and nature of said Lake Street Company, with power and authority to operate said railroad and carry on the business of said Lake Street Company under the orders and protection of this court, with all the usual powers and duties of receivers in such cases, and with authority to proceed to recover, by suit or otherwise, all property in the hands of other parties belonging to the said Lake Street Company, and all moneys justly due it and unlawfully withheld by any person on any pretense whatever; that an injunction may issue out of this court restraining the said defendants and each of them, and their agents and servants, from in any way interferring with the possession and control of such receiver over said property, and from selling, transferring, conveying, or otherwise disposing of or incumbering any of the property, rights, or franchises of the said Lake Street Company; that all rights and franchises and all the property, real and personal, of said Lake Street Company may be declared subject to the lien of the said mortgage or deed of trust; that an accounting may be taken of the number and amount of bonds and overdue coupons outstanding under said mortgage or deed of trust and of the interest due upon the same; that the said mortgage or deed of trust may be found to constitute a first lien on all the property of the said Lake Street Company for the payment of said bonds and coupons; that the said Lake Street Company may be decreed to pay the amount
435 so found due on account of said overdue coupons, with costs, expenses, and allowances, to be determined by the court within a short day to be fixed by the court; that in default thereof all the property and franchises of the said Lake Street Company may be sold under a decree of this court and according to law and the practice of this court to satisfy the entire amount so found due on all of said bonds and coupons; that out of the proceeds of said sale, or the net earnings while in the hands of a receiver, there may be paid the costs of this proceeding and the costs and expenses of your orator in this suit, including proper solicitor and counsel fees, with a proper compensation to your orator for its own services as trustee to be allowed by the court; that the residue thereof may be applied to the payment of the principal and matured coupons of said bonds and interest thereon; that if there be any surplus it may be applied in such a way as this court may direct; that in case of such sale the said defendants and all parties claiming by, through, or under them, since the commencement of this suit, may be forever barred and foreclosed of and from any equity of redemption of, in, or to the said property or franchises; that a proper deed may be made to the purchaser at such sale; that any part of said decree remaining unsatisfied after the application of the proceeds of such sale may be entered in this cause as a judgment against said Lake Street Company, and that your orator may have such other, fur-

ther, and different relief in the premises as the circumstances
436 of the case may require and as may be agreeable to equity.

May it please your honors to grant unto your orator a writ of subpœna, directed to the said Lake Street Elevated Railroad Company, The Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, The West Chicago Street Railroad Company, and The American Trust & Savings Bank, defendants, therein and thereby commanding them and each of them to be and appear before this honorable court at a certain time and under a certain penalty therein to be limited, then and there to answer all and singular the premises, and further to stand to, perform, and abide such order and decree herein as to the court may seem meet.

And your orator will ever pray, etc.

THE FARMERS' LOAN & TRUST COMPANY, *Complainant*,
By TURNER, McCLURE & ROLSTON AND RUNNELLS & BURRY,
Its Solicitors.

J. S. RUNNELLS, *Of Counsel.*

437 STATE OF ILLINOIS, }
County of Cook, } *ss.*:

William Burry, being duly sworn, on oath says that he is one of the solicitors for said complainant, The Farmers' Loan and Trust Company; that at its request he has carefully and fully investigated all the matters and things in the foregoing bill of complaint set forth and is conversant therewith; that he verily believes from information derived from such investigation that all the matters and things in said bill set forth are true as therein stated.

WM. BURRY.

Subscribed and sworn to before me this 29th day of January, A. D. 1896.

EMORY D. FRAZER,
[SEAL.] *Notary Public.*"

(Endorsed:) "Filed Jan. 30, 1896, at 10.35 a. m. S. W. Burnham, clerk."

438 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States, for the Northern District of Illinois, Northern Division.

THE FARMERS' LOAN & TRUST CO.
vs.
THE LAKE STREET ELEVATED R. R. Co., THE Union Elevated R. R. Co., The Northwestern Elevated R. R. Co., The West Chicago Street R. R. Co., and The American Trust & Savings Bank, Trustee.
} In Chancery. Gen. No., 23995.

Amended Bill of Complaint.

Turner, McClure & Rolston, Runnells & Burry, solicitors for complainant.

439 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE FARMERS' LOAN & TRUST CO.
vs.
THE LAKE STREET ELEVATED R. R. Co., THE Union Elevated R. R. Co., The Northwestern Elevated R. R. Co., The West Chicago Street R. R. Co., and The American Trust & Savings Bank, Trustee.
} In Chancery. Gen. No., 23995.

Amended Bill of Complaint.

To the honorable judges of said court in chancery sitting:

Your orator, The Farmers' Loan and Trust Company, a corporation duly created by and under the laws of the State of New York, by leave of court for this purpose first had and obtained, brings this its amended bill of complaint against The Lake Street Elevated Railroad Company, The Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, The West Chicago
440 Street Railroad Company and The American Trust and Savings Bank, trustee, all of whom are corporations, organized under the laws of the State of Illinois, and having their principal office in the City of Chicago in said northern district.

And thereupon your orator complains and shows that:

1. Your orator is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and as such corporation is fully authorized and empowered to hold in trust the property conveyed to it in trust, as hereinafter fully set forth, and to execute the trusts reposed in it under and by virtue of the mortgage or deed of trust hereinafter described.

2. The defendants are all corporations organized and existing

under and by virtue of the laws of the State of Illinois, and said Lake Street Elevated Railroad Company, hereinafter called the Lake Street Company, is organized for the purpose of constructing, maintaining and operating a railroad from a point at or near the east end of Lake street, in the city of Chicago, in said county of Cook, in a westerly direction upon or near said Lake street and extensions thereof to the west line of said county of Cook, together with such feeders, loops, switches and branch lines as its board of directors may deem advisable, and has its principal office and place of abode in the city of Chicago aforesaid.

3. On or about the 7th day of April, A. D. 1893, by due and lawful action of its stockholders and board of directors, at meetings duly convened according to law in said city of Chicago, the said Lake Street Company determined to make and issue its first-mortgage bonds to the amount of six million five hundred thousand dollars ($6,500,000), and to such further amount as should be there-
441 after issued under the provisions of said mortgage, for extensions and additions to its then existing property, payable at the American Trust and Savings Bank in said city of Chicago, or at the Farmers' Loan and Trust Company in the city of New York, in the State of New York, on the 1st day of July, A. D. 1928, in gold coin of the United States of America, bearing interest at the rate of five per cent. per annum, payable in like gold coin, semi-annually on the first days of January and July in each and every year until said principal sum should be fully paid, according to the tenor of the coupons or interest warrants thereunto annexed, free from any and all taxes levied by any authority, numbered consecutively from one upwards, each of said bonds to be duly executed under the seal of said Lake Street Company, signed by its president and attested by its secretary, and the interest coupons to be authenticated with the engraved signature of its treasurer; and, in order to secure the payment of the principal and interest of said bonds equally and ratably, without priority or discrimination, irrespective of the date of the issue of the same, the said defendant Lake Street Company, by due action of its stockholders and directors, at their said meetings, determined to execute a mortgage or deed of trust to your orator and said American Trust and Savings Bank as trustees, conveying to them all the railway property, corporate rights, franchises and other property of said Lake Street Company, the said mortgage or deed of trust to contain all and singular the covenants, provisos and conditions set forth in the mortgage or deed of trust hereinafter recited.

4. Thereupon, and on or about the 7th day of April, A. D.
442 1893, said Lake Street Company, to secure the payment of the said bonds and interest thereon, so to be issued, as above stated, being thereunto by law duly authorized, and in accordance with said action of its stockholders and board of directors, executed, acknowledged and delivered to your orator and said American Trust and Savings bank as trustees, its certain mortgage or deed of trust, dated that day, therein and thereby conveying and transferring to your orator and said bank and to their successors and assigns for-

ever, all said property and premises; which mortgage or deed of trust was in the words and figures following, to wit:

Mortgage.

This indenture, made this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-three (A. D. 1893), between the Lake Street Elevated Railroad Company, a corporation duly organized and existing under the laws of the State of Illinois, hereinafter called the "railroad company," party of the first part, and the American Trust and Savings bank, a corporation duly organized and existing under the laws of the State of Illinois, as trustee, party of the second part, and the Farmers' Loan and Trust Company, a corporation duly organized and existing under the laws of the State of New York, as "cotrustee," party of the third part, said parties of the second and third parts being hereinafter, for convenience, called the "trustees."

Whereas, the railroad company is a corporation duly organized and existing under the laws of the State of Illinois, for the purpose of constructing, maintaining and operating a railroad from a point at or near the east end of Lake street, in the city of Chicago, county of Cook and State of Illinois, in a westerly direction upon or near said Lake street, and the extensions thereof, to the west line of said Cook county, together with such feeders, loops, switches and
443 branch lines from such point or points in said Cook county as the board of directors of said company may deem advisable; and,

Whereas, the railroad company is engaged in the construction of a part of its main line of railroad lying within the said city of Chicago, and has acquired the right to construct, maintain and operate its railroad upon, along and across various streets and alleys, by virtue of various ordinances duly passed by the city council of said city of Chicago, and said railroad company is about to apply for and obtain permission of said city of Chicago to construct, maintain and operate branch lines of railroad leading from said main line of railroad; and,

Whereas, there is now existing against the railroad company a bonded indebtedness covered by a mortgage or deed of trust upon all its railroads and appurtenances and its property, real and personal, and the railroad company has contracted for the construction and equipment of all that part of its elevated railroad over the route which it has hitherto been authorized by ordinances as aforesaid, to construct, maintain and operate; and,

Whereas, it is now necessary for the railroad company to issue its bonds and borrow money for the purpose of redeeming and canceling said bonded indebtedness and for the purpose of constructing, completing, finishing, improving, operating and equipping its main line of railroad and appurtenances thereto, and also from time to time for the following purposes, viz:

(*a*) In adding to, extending and building additional railroad and

branches of said railroad, and acquiring railroads by construction or otherwise at not exceeding eight hundred and fifty thousand dollars ($850,000.00) of bonds per mile for two-track road fully equipped with rolling stock, stations, switches, signal stations and necessary appurtenances.

(*b*) Paying, adjusting or settling claims or suits for damages arising out of the building or operation of said railroad or extensions or branches.

(*c*) Procuring right of way and such other real estate as may be needed by the railroad company in extending, adding to and building branches of said railroad.

(*d*) Paying any interest that may accrue and remain unpaid
444 during the first two years of the operating of the railroad, provided to be constructed in said construction contract after delivery and acceptance of said railroad from the contractors for the same, after applying to the payment of such interest the net earnings of the railroad during the said two years.

(*e*) In case the railroad shall eventually cross the Chicago river or either of its branches, upon its own bridge, not exceeding five hundred thousand dollars ($500,000.00) of bonds for each such bridge and its approaches.

And, whereas, the board of directors of the railroad company with the concurrence of more than two-thirds of the amount of all the stock of the railroad company which has been duly expressed and recorded as required by law, has resolved to borrow money for said purposes, and issue and dispose of its mortgage bonds therefor, and secure the payment of these bonds so to be issued, with the interest thereon, by a first mortgage upon its corporate property and franchises, which shall be a first lien thereon and upon all the real and personal property, rights and franchises relating thereto, now owned and held by the said railroad company, or which may hereafter be owned by it.

And, whereas, the board of directors of the railroad company has further resolved, with the like concurrence as aforesaid, that the said bonds shall be executed and issued by the president and secretary of the railroad company under its corporate seal, and the interest warrants all authenticated by and with the name of the treasurer, that the said bonds shall be numbered consecutively from one upwards, each for the principal sum of one thousand dollars ($1,000.00), payable in gold coin of the United States of America of the present standard of weight and fineness, to the bearer or to the registered holder thereof, at the office of the American Trust and Savings bank, in the city of Chicago, or at the office of the Farmers' Loan and Trust Company, in the city of New York, on the first day of July, A. D. 1928, with interest thereon at the rate of five per cent. per annum, payable in like coin semi-annually on the first days of January and July in each year, from January first, 1893, until said principal sum shall be fully paid, upon the presentation and
445 surrender of the coupons annexed to said bonds to evidence the said interest thereon, at the office of said American Trust and Savings bank or at the office of the said Farmers' Loan and

Trust Company, the said bonds each to contain the condition, set forth in the form below, and each of said bonds and coupons attached thereto and the trustees' certificate to be endorsed thereon to be substantially in the following form:

No. —. $1,000.00.

UNITED STATES OF AMERICA, *State of Illinois.*

The Lake Street Elevated Railroad Company First-mortgage Five Per Cent. Thirty-five-year Gold Bond.

For value received, the Lake Street Elevated Railroad Company, a corporation created and existing under the laws of the State of Illinois, promises to pay to bearer (or if this bond be registered, to the registered holder thereof) at the American Trust and Savings bank, in the city of Chicago in the State of Illinois, or at the Farmers' Loan and Trust Company, in the city of New York, in the State of New York, on the first day of July in the year of our Lord one thousand nine hundred and twenty-eight (A. D. 1928) the sum of one thousand dollars ($1,000.00) in gold coin of the United States of America of the present standard of weight and fineness and to pay interest thereon in like gold coin at the rate of five per centum per annum from January 1st, A. D. 1893, upon the presentation and surrender at said American Trust and Savings bank or at the Farmers' Loan and Trust Company of the annexed coupons as they severally become due, semi-annually on the first days of January and July of each year until said principal sum shall be fully paid.

Both principal and interest are payable without deduction on account of any taxes or assessments, by whatsoever authority the same may be levied.

This bond is one of a series of bonds of like tenor, date,
446 amount and effect, numbered consecutively from one upwards, all of which, whether issued or to be issued, together with the interest thereon, without reference to the time when said bonds shall be actually issued, are equally secured by a mortgage or deed of trust, bearing even date herewith, made by said railroad company to said American Trust and Savings Bank of Chicago, Illinois, as trustee, and the Farmers' Loan and Trust Company of New York City, as cotrustee, conveying all and singular its railroad and appurtenances, its real and personal property, rights of property and franchises now owned or which may be hereafter acquired by said railroad company, as more particularly mentioned and described in said mortgage or deed of trust. Said bonds issued and to be issued by said railroad company, its successors and assigns, are issued subject to and in accordance with the terms and conditions of said mortgage or deed of trust; the amount of bonds to be issued is limited as provided in and by said mortgage or deed of trust.

Upon default in the payment of any interest on any of said bonds the principal of said bonds may be made due and payable as provided in said mortgage or deed of trust.

It is agreed by the holder of this bond that no recourse shall be had for the payment of this bond, or the indebtedness evidenced thereby, or the interest thereon, or any part thereof to the individual liability of any stockholder, or officer of the said railroad company, such liability being waived, and by accepting this bond each successive holder assents to this provision.

This bond may be registered on the books of said railroad company at its financial agency in Chicago or in New York, and such registration noted thereon, after which no transfer thereof shall be valid except on said books, until after registered transfer to bearer. The annexed coupons shall always be transferable by delivery.

This bond shall not be obligatory and valid until the certificate endorsed hereon has been signed by said trustee and cotrustee under said mortgage or deed of trust, or their successors.

In witness whereof, the said The Lake Street Elevated Railroad Company has caused its corporate seal to be hereto affixed, and
447 the same to be attested by its secretary, and this bond to be signed by its president, and has attached hereto coupons authenticated by the fac-simile of the signature of its treasurer, this seventh day of April, one thousand eight hundred and ninety-three (A. D. 1893).

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By —— ——, *President.*

Attest: —— ——, *Secretary.*

(*Coupon.*)

On the first day of ——, A. D. —, the Lake Street Elevated Railroad Company will pay to the bearer, at the American Trust and Savings bank, in the city of Chicago, or the Farmers' Loan and Trust Company in the city of New York, twenty-five dollars ($25.00) in United States gold coin, for six 'months' interest on its first-mortgage bond No. —, without deduction for taxes as in said bond expressed.

—— ——, *Treasurer.*

Trustee's Certificate.

This bond is hereby certified to be one of the series of bonds described in the within-mentioned mortgage or deed of trust.

THE AMERICAN TRUST AND SAVINGS BANK, *Trustee,*
By —— ——, *President.*
THE FARMERS' LOAN AND TRUST COMPANY, *Cotrustee,*
By —— ——, *President.*

And, whereas, the board of directors of the railroad company with the concurrence of more than two-thirds of its stockholders aforesaid, has resolved to secure the payment of the said bonds so to be issued with the interest thereon, according to the tenor and effect of said bonds and coupons, by the execution of this mortgage or deed of trust.

Now therefore, this indenture witnesseth, that, to secure the payment of the said bonds and all moneys payable thereunder to
448 the amount issued or to be issued as hereinafter mentioned, and in consideration of the premises, and of one dollar lawful money of the United States of America to the railroad company by the trustees, at or before the ensealing or delivery of these presents, in hand paid, the receipt whereof is hereby acknowledged, the railroad company hath granted, bargained, sold, remised, released, aliened, enfeoffed, conveyed, confirmed, assigned, transferred and set over and by these presents, doth grant, bargain, sell, remise, release, alien, enfeoff, convey, confirm, assign, transfer and set over unto the said parties of the second part and their successors and assigns forever, all and singular all the right, title, interest, claim or demand whatsoever, which the railroad now has or is entitled to, or which it shall or may at any time hereafter acquire or become entitled of, in or to, all and singular the railroad and railroads of the party of the first part constructed or now being or hereafter to be, constructed. The said road now being constructed being about seven and one-half miles, or thereabouts, in length, in all its branches from its main lines, and extending from Market street in the city of Chicago, in the county of Cook and State of Illinois, along Lake street to West Fifty-second street in said city, with a loop beginning and ending at said Market street. Also any and all branches and extensions thereof, which are or may hereafter be constructed, or acquired, or authorized to be constructed or acquired. Also all the lands, tenements, and hereditaments acquired or appropriated, or which may hereafter be acquired or appropriated for the purpose of a right of way or for other purposes, for said railroad or railroads, and all the easements or appurtenances thereto belonging, or in anywise appertaining, and all railroads, sidings, turnouts, ways, and rights of way, depot grounds, tracks, rails, bridges, viaducts, culverts, fences, depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, warehouses, machine shops, workshops, superstructures, erections and fixtures and other structure, with the improvements thereon, whether now held or hereafter at any time acquired for
449 the use of said railroad or railroads or branches thereof, or in connection therewith or the business thereof; and with all the piers, foundations, columns, girders, trestles, sleepers, rails, telegraph, telephone and signal devices and other members and appliances of or connected with said railroad or belonging thereto, or used or provided, or intended to be used for the same, and all the engines, boilers, cables, locomotives, motors, tenders, passenger cars, freight cars, and other cars, rolling stock and equipments of or appertaining to, or used in connection with the said railroad, whether now owned or hereafter acquired by said

railroad company, and all tools, machinery, apparatus, fuel, materials and supplies whatever, whether for or in connection with such railroad itself or the motor power, rolling stock or equipment thereof, or for workshops, machine shops or other buildings, or construction or repairs of any kind now or hereafter belonging to or provided for, or intended to be used for or in connection with said railroad, or for the construction, operation or maintenance thereof. Also all and singular the franchises, licenses, permits and privileges, permits and privileges from any governmental or municipal authority, and all powers, benefits, rights, immunities, income, tolls, fares, profits and advantages belonging to the railroad company, appertaining to or to arise or to accrue from the said railroad and the maintenance and operation thereof, whether the same are now owned or possessed, or shall be hereafter acquired by the said railroad company, including all the franchises, power, rights and privileges pertaining to said railroad, conferred upon said railroad company in and by any ordinances which it now has from the city of Chicago, or which may be hereafter conferred upon it in any manner soever; together with all and singular the tenements, hereditaments and appurtenances to the said railroad company, and other property and premises hereby mortgaged or expressed, or intended so to be, or any part thereof, belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity of the railroad company of, in and to the same, and every part and parcel thereof; with the appurtenances as fully and completely as if the said railroad were at the date hereof fully constructed, completed and equipped.

450 To have and to hold, all and singular the above-described premises, property, rights, franchises and appurtenances unto the said party of the second part, their successors and assigns forever, to the only proper use and behoof of the parties of the second part, their successors and assigns, in trust, nevertheless, for the equal *pro rata* use, benefit and security of each and all and every the persons or corporations who may be or become holders of any of the above-mentioned bonds, numbered from one to the highest number that may be issued, inclusive, without any preference or priority of any one bond over another by reason of priority in the time of issue or negotiation thereof or otherwise howsoever, and for the uses and purposes herein declared and expressed.

Provided, however, and these presents are upon the express condition that if the railroad company, its successors or assigns, shall well and truly pay or cause to be paid to the holders thereof, the principal of all the bonds secured or intended so to be, and the interest moneys to become due thereon respectively, at the time and in the manner specified in the said bonds and coupons, without deduction on account of taxes, or assessments, by whatsoever authority the same may be levied, and according to the true tenor and effect, and shall keep and perform all of the covenants, agreements and stipulations on its part herein contained, then these presents and the

trusts hereby created, and all the estate, right, title and interest hereby vested in the said trustees, their successors or assigns, in the trust, shall cease and determine as fully as if this mortgage had never been executed, and in that case the said parties of the second part and their successor or successors in the said trust, on demand by said railroad company, and the cancellation of the bonds and coupons hereby secured, shall execute and deliver to it all such instruments as may be necessary to discharge and cancel this mortgage.

And provided further, that until default shall be made by the railroad company, its successors or assigns, in the payment of the principal or interest of the said bonds hereby created, or some of them, or in the performance of some other of the covenants, stipulations and provisions on its part herein contained, the railroad company shall have and be entitled to the possession, manage-
451 ment, operation, use and enjoyment of the property and franchises hereby mortgaged, and the rents, incomes and profits thereof.

It is hereby covenanted and agreed by and between the parties hereto, and the railroad company, party of the first part, hereby covenants, promises and agrees to and with each of the persons and corporations, firms and partnerships, who may become the holders of said bonds and coupons, or any of them, as follows, to wit:

First. That, except as hereinafter provided, the total issue of said bonds secured hereby shall be limited to six thousand five hundred (6,500) bonds, for the principal sum in the aggregate of six million, five hundred thousand dollars ($6,500,000) and that, except as hereinafter provided, no bonds in addition to said six million five hundred thousand dollars ($6,500,000) shall be certified and delivered by the trustees.

The said six thousand five hundred (6,500) bonds are to be used and disposed of as follows, to wit:

One thousand (1,000) bonds for the principal sum in the aggregate of one million dollars ($1,000,000) are to be used for the purpose of repaying or retiring eight hundred and twelve ($12) six per cent. bonds of one thousand dollars (1,000) each heretofore issued by the Lake Street Elevated Railway Company, for the principal sum in the aggregate of eight hundred and twelve thousand dollars ($812,000), and said one thousand (1,000) bonds secured hereby are to be reserved by the trustees in its possession and certified and delivered only in exchange for or to retire or pay a proportionate number of said six per cent. bonds of said elevated railway company; that is to say, whenever any of said six per cent. bonds now outstanding be paid or retired, they shall be canceled, and, thereupon, the trustee shall certify and deliver to the company, or its order, a proportionate number of the said one thousand (1,000) bonds hereby secured and reserved as aforesaid, which bonds may then be used by the said company for its corporate purposes in the discretion of its board.

452 Five thousand one hundred and fifty (5,150) of said bonds hereby secured, for the principal sum of five million one hundred and fifty thousand dollars ($5,150,000), or the money de-

rived from the sale thereof, are to be used to complete and acquire that part of the railroad of the said company which extends from Market street west to West Fifty-second street, in the city of Chicago, and also the loop beginning and ending at said Market street, as provided by ordinances passed by the city council of the city of Chicago, November 24, 1890, granting the right to construct said railroad, or such work as may be substituted for said loop.

Three hundred and fifty (350) of said bonds, for the principal sum of three hundred and fifty thousand dollars ($350,000), are to be used for the lawful purposes of said company in the discretion of the board of directors.

The said five thousand one hundred and fifty (5,150) bonds and said three hundred and fifty (350) bonds are to be certified and delivered by the trustee on the order of the board of directors or the executive committee of the company. Bonds may be issued in addition to said six thousand five hundred (6,500) for the following purposes only:

(*a*) In adding to, extending and building additional railroad and branches of said railroad and acquiring railroads by construction or otherwise, at not exceeding eight hundred and fifty thousand dollars ($850,000) of bonds per mile for a two-track road fully equipped with rolling stock, stations, switches, signal stations and necessary appurtenances.

(*b*) Paying, adjusting or settling claims or suits for damages arising out of the building or operation of said railroad or extensions or branches.

(*c*) Procuring right of way and such other real estate as may be needed by the railroad company in extending, adding to and building branches of said railroad.

(*d*) Paying any interest that may accrue and remain unpaid during the first two years of the operation of the railroad, provided to be constructed in said construction contract, after delivery and acceptance of said railroad from the contractors for the same, after applying to the payment of such interest the net earnings of the railroad during the said two years.

453 (*e*) In case the railroad shall eventually cross the Chicago river or either of its branches upon its own bridge, not exceeding five hundred thousand dollars ($500,000) of bonds for each such bridge and its approaches.

Second. Said bonds to be issued in addition to the six million, five hundred thousand dollars ($6,500,000) of bonds are only to be issued by resolution or order of the board of directors of the railroad company, that additional bonds are required for the purposes hereinbefore set forth, and the proceeds from the sale of said bonds shall only be used for the purposes therein set forth and for no other. The certificate of the president or vice-president and chief engineer of the railroad company as to the existence of the facts necessitating the issue of said additional bonds for the purposes aforesaid, together with certified copies of the resolution or order of the board of directors aforesaid, shall be furnished to the trustee, and written orders, copies, resolutions and certificates shall in each

and every case be sufficient and conclusive evidence to said trustees to a statement therein made and contained, and shall duly protect the trustees in respect of a certification and delivery of any of said bonds thereunder, and no duties shall be imposed on the trustees to look behind the same or any thereof before certifying and delivering bonds thereunder. To further assure this provision the said trustees, if they deem proper so to do, may appoint an agent of known integrity and business capacity, with full power to dismiss him and appoint another in his stead at pleasure, who shall have the right to attend all meetings of the board of directors, have free access to, and from time to time, examine all books of account of the party of the first part, appertaining to the application and expenditure of said proceeds of the sale of all of said bonds issued in excess of said six thousand five hundred (6,500) bonds, and shall make full report thereof to the trustees every three months, and as much oftener as they may, from time to time, require, for the information of the bondholders under this mortgage, and the railroad company shall pay said agent a reasonable compensation for his services during the time of the construction of said railroad, for which additional bonds are desired as aforesaid, not to exceed, however, one thousand dollars ($1,000) per annum.

451 Third. The company shall keep an agency in the city of New York while said bonds are outstanding for the payment of the principal and interest thereof, and shall keep at said agency books on which the transfer of any bond shall, upon request, be registered, without expense to the holder. Each registration of a bond shall be noted thereon, after which no transfer thereof can be made except on said books, until after registered transfer to bearer, when the bond will again become transferable by delivery until again registered in like manner in the name of the holder. The trustee shall have access to the said books at all reasonable times, and upon request in writing, shall have a list of registrations shown thereon at any specified date. For the purpose of administering the trust created by this mortgage the person in whose name any bond is registered on said books shall be taken to be the owner thereof. The coupons annexed to any bond issued hereunder, whether the bond be registered or not, will always be transferable by delivery.

Fourth. The railroad company covenants and agrees that so long as it shall hold possession and enjoy the property and franchises hereby mortgaged or expressed or intended so to be, it will pay and discharge all taxes, assessments and other governmental charges levied or imposed thereon during the continuance of this mortgage, that it will not suffer any lien superior to the lien hereby created to attach to said property or franchises, or to any part thereof; that it will not permit or suffer any waste thereof; that it will keep and maintain the property hereby mortgaged in good order and condition; that it will keep all property hereby mortgaged, liable to be destroyed by fire, reasonably insured, and in case of destruction by fire, all insurance money shall be promptly applied to replace such property as may be destroyed or to the purchase of other property

needed for the maintenance or operation of said railroad, and such replaced property shall immediately become subject to this mortgage. Such insurance shall be effected in companies satisfactory to the trustees, policies to be delivered to and kept by the trustees, and to be made payable to the trustees or their successors. The trustees, however, shall be under no obligation to determine the amount of such insurance.

455 Fifth. If default shall be made in the payment of any interest money mentioned in the said bonds or coupons, or any or either of them, when the same becomes due and is demanded, and if such default shall continue for a period of six months after such demand and no extension thereof shall be granted by the holders thereof, the trustees, or their successor or successors in the trust hereby created may, if thereunto requested in writing under seal, by the holders of one-quarter in interest of the said bonds then outstanding, and shall, if thereunto requested in writing under seal by the holders of a majority in interest of said bonds then outstanding declare the principal of all the bonds hereby secured then outstanding to be and the same shall thereupon become immediately due and payable, anything contained in said bonds or herein to the contrary notwithstanding.

Sixth. If default shall be made in the payment of any interest moneys mentioned in the said bond and coupons, or any or either of them, when the same becomes due and demanded, whether such default shall have continued for the said period of six months or not, the trustees may and upon the request in writing by the holders of a majority in interest of the said bonds then outstanding, and upon being indemnified to their satisfaction for their expenses and liabilities, shall enter into and take full possession of said railroad, and of all property hereby mortgaged or expressed, or intended so to be, and hold, use, manage, maintain and operate said railroad by such agent and managers as such trustees may appoint; collect and receive all moneys and revenues arising from such management and apply the same to the expenses of the trustees in the performance of the trust, including a reasonable compensation for their own services, the services of their counsel, attorneys, agents and other servants and next to the maintenance, management and operation of the said railroad, and of the property belonging thereto, hereby mortgaged, including the payment of taxes, assessments and other governmental charges, damages and such useful additions, alterations or repairs to the mortgaged property or any of it as the trustees may think proper to be made and next to the payment *pro*

456 *rata* of the interest due, and in default of said bonds. In case all the said payments shall have been made in full and no suit to foreclose this mortgage shall have been begun, the trustees after making such provisions as to them may seem advisable for the payment of the next semi-annual installment of interest to fall due, shall restore to the railroad company, its successors or assigns, the possession of the premises hereby mortgaged. This power of entry may be exercised as often as occasion therefor shall arise in the judgment of the trustees pending this trust, and the trustees

may, so long as any interest remains in default, continue to exercise the power herein granted for such period or periods as they may deem expedient, unless and until the holders of a majority in interest of the bonds secured hereby, then outstanding, shall otherwise in writing request.

Seventh. The provisions contained in article fifth of this mortgage shall not be construed to preclude the trustees or their successors from enforcing any appropriate remedy against the railroad company or its property and franchises hereby mortgaged by foreclosure or otherwise.

If default shall be made in the payment of principal or of any interest moneys mentioned in said bonds and coupons, or any or either of them, or any part thereof, when the same becomes due and is demanded, or in the performance of any covenants, promises or agreements on the part of the railroad company herein contained, and if such default shall continue for a period of six months, the trustees may, in their discretion, upon being requested in writing by the holders of a majority in interest of said bonds outstanding, and upon being indemnified to their satisfaction against costs and expenses which may be incurred by acting in pursuance of such request, shall either after entry as hereinbefore provided, or without such entry, proceed by suit or suits at law or in equity, as the said trustees may be advised, to enforce payment of the said bonds and to foreclose this mortgage, and to sell the railways, lands, premises, franchises, rights, appurtenances and property of whatsoever kind or nature, and wheresoever situated, hereby conveyed, under the
457 judgment or decree of a court or courts of competent jurisdiction. In case the trustees shall proceed by suit or suits at law, or in equity, after default as above provided in said trust deed, shall be entitled to have the premises, franchises, rights, privileges and property hereby granted and conveyed, or intended so to be, sold at judicial sale under the order of a court or courts of competent jurisdiction, for or towards the satisfaction of the principal or interest or both, due and owing upon the bonds then outstanding, issued under or entitled to the benefits of the security of this mortgage, and for the enforcement of the rights, liens and securities of the trustees and the bondholders, and shall be entitled pending any such suit or proceedings, to a receivership of such railways, lands, premises, franchises, rights, appurtenances and property of the fares, freights, tolls, earnings, revenues, issues, profits and income thereof.

And the said railroad company doth for itself, its successors and assigns, hereby further covenant and agree by and with the trustees, that at and immediately upon the commencement, by the trustees, of any suit or any other legal proceeding to obtain possession of the premises hereby mortgaged and conveyed upon the default in the performance of any of the covenants herein contained, the said railroad company, its successors and assigns, shall and will severally, waiving the issue and service of process, enter their voluntary appearance in such suit or proceeding and consent to the entry of a judgment for the recovery and possession of said premises and every part thereof, and that at and upon the commencement by

the trustees of any suit or proceedings upon default in the performance of any of the covenants herein contained for the foreclosure of this mortgage, the railroad company, its successors and assigns shall and will severally, waiving the issuance and service of process, enter their voluntary appearance in such suit or proceeding and consent to the appointment of a receiver of said property, and the tolls, income and revenue thereof for the sole benefit of the holders of the said bonds secured hereby.

Eighth. Every holder of the bonds secured hereby accepts the same subject to the express understanding and agreement that every right of action, whether at law or in equity under this indenture, is
458 vested exclusively in the trustees, and under no circumstances shall the holder of any bonds or coupons, or any number of such holders have any right to institute any action at law upon any coupon or coupons, or otherwise, or any suit or proceedings in equity or otherwise, under this indenture, for the purpose of enforcing any payment, covenant or remedy, herein, or in said bonds contained, or to foreclose this mortgage except in case of refusal on the part of the trustees to perform any duty imposed on them by this indenture in respect to such payment, covenant, remedy or foreclosure after demand by a holder or holders of such bonds or coupons, and the production of such bonds or coupons by the holder thereof to the trustees, or the furnishing by such holders of other evidence satisfactory to the trustees that they are such holders, and the giving to the trustees of an indemnity satisfactory to them securing them against liability by reason of the action requested, but no inaction by said trustees upon any such request shall be deemed a refusal until after the expiration of a reasonable time for the consideration thereof by said trustees.

In every case in which the trustees are authorized or required under any provision of this instrument to take any action upon the request of the holders of said bonds, the trustees shall have the right to require the person or persons presenting such request to furnish proof as to the ownership of the bonds represented by him or them by the production of said bonds, or by affidavits or other evidence satisfactory to the trustees, and if such proof be so required, the said request will be without effect until such proof shall be furnished.

Ninth. Upon any sale of the property and franchises hereby mortgaged, or any part thereof, the purchaser in making payment therefor shall be entitled, after paying in cash so much as shall be necessary to cover the costs and expenses of the sale and of the proceedings incident thereto, and all other charges that may be decreed to be paid in cash, to appropriate and use towards the payment of the remainder of the purchase price any of the bonds or coupons issued hereunder and entitled to participate in the proceeds of such sale; reckoning each bond or coupon so appropriated and
459 used at such sum as shall be payable thereon, out of the net proceeds of the sale; and proper receipts shall thereupon be given to the holders of such bonds or coupons for the amount so payable thereon, and the bonds or coupons, if the net proceeds of

the sale shall be sufficient to pay them in full, shall be delivered up to the person making the sale under decree of the court for cancellation; or if the proceeds of the sale shall not be sufficient to pay such bonds or coupons in full, then proper endorsements shall be made thereon of the amount so paid, and they shall then be returned to the holders.

Tenth. The trustees shall permit such necessary changes to be made in the line of said railroad as may be in their judgment advisable and advantageous to be made, and any property acquired by the railroad company in consequence of such changes shall immediately become subject to this mortgage.

Eleventh. While the railroad company shall be in possession of the mortgaged premises, — there shall be no existing default in the payment of principal or interest of any of said bonds, or in the performance of any of the stipulations, conditions and provisions on the part of the railroad company in this mortgage contained, the railroad company, its successors and assigns may, from time to time, sell or otherwise dispose of, free and clear from the lien of this mortgage, any rolling stock, equipment or other personal property held or intended for use upon the said railroad which shall have become worn out or otherwise unsuitable for use, or, whenever it shall be intended to replace the same by other rolling stock or equipment or personal property; provided, however, that such sale or disposition shall not impair or reduce the efficiency of the rolling stock, equipment or other personal property required for the operation of the said railroad, and all rolling stock, equipment and personal property which shall from time to time be acquired for use upon or in connection with said railroad by the said railroad company, its successors or assigns, with the proceeds of any such sale or disposition or otherwise, shall be subject to the lien of this mortgage.

While the railroad company shall be in possession of the mortgaged premises and there shall be no existing default as aforesaid, the trustees shall have full power and authority, in their discretion, upon the written request of the railroad company, and upon the delivery to them of an attested copy of the resolution of the board of directors of the railroad company authorizing the same to release or convey any land or other real property hereby mortgaged, which in the judgment of the board of directors of the railroad company are not required for the purpose of constructing, maintaining or operating the said railroad, and which the railroad company shall in good faith sell and desire to have released and conveyed in order to give good title to the purchasers, and all the proceeds arising from the sale of such land or real property shall either be applied to the purchase of other property for the railroad company, which shall immediately become subject to this mortgage and which in the judgment of the trustees is of equal value and benefit to the railroad company or at the option of the trustees, all the proceeds arising from the sale of any such lands or real property shall be paid over to them to be used by said trustees in the purchase of one or more of the bonds hereby secured in the following manner:

Upon the receipt by the said trustees of any of such proceeds,

they shall advertise in a newspaper published in the city of New York, State of New York, and in the city of Chicago, Illinois, for four successive weeks, for proposals for the sale to them of bonds secured by this mortgage, and upon the coming in of such proposals they shall apply such proceeds to the purchase of such bonds at the lowest price at which the same can be obtained.

In case no proposals shall be so received or in case the proposals so received be not for an amount of bonds sufficient to exhaust all of said proceeds in the hands of the trustees, the trustees shall apply said proceeds or the balance thereof not applied to the purchase of bonds secured hereby upon the New York stock exchange, or Chicago stock exchange, or at the market price thereof.

All bonds and coupons purchased by the said trustees under the foregoing provisions shall be forthwith canceled by them and surrendered to the railroad company and shall not again be issued. Provided, always, however, that no portion of the main line or branches of said railroad, or any part of the principal depots,
461 stations, or terminal facilities or other property which in the judgment of the trustees is or may be essential to the due operation of the said railroad, shall be so released unless replaced by property which in the judgment of the trustees is of equal value and of equal benefit to the efficient operation of said railroad. Provided, that the trustees may consent to the release of that part of the railroad within the South division of the city of Chicago, upon such terms and conditions as they may impose.

The said trustees shall not be subject to any liability to any person or persons by reason of any act done or performed in good faith under the provisions of this article.

Twelfth. The railroad company further covenants that it will not apply for, or avail itself of any injunction or stay of proceedings, or plead, or in any way take advantage of any extension law, stay-law, valuation law, redemption law, appraisement law, or any other law, whether now in force, or which may hereafter be in force, which may in any way alter, impair or impede the rights or remedies of the holders of the bonds issued hereunder or of the trustees, or which shall affect or change the time, place, means, or mode of perfecting or enforcing such rights or remedies.

Thirteenth. The railroad company for itself, its successors and assigns, hereby further covenants and agrees to, and with the trustees and their successors in the trust, and to and with the respective persons and corporations who shall, at any time be the holders of the said bonds hereby secured, or any of them, that the railroad company, its successors and assigns, shall and will at any time, and from time to time thereafter, make, do, execute and deliver all such further acts, deed- and things, as shall be reasonably advised, devised or required to effectuate the intention of these presents, and to secure and confirm to the said trustees and their successor, or successors in trust all and singular the property and estate, real and personal, and the rights, privileges and franchises hereinbefore described, and hereby intended to be mortgaged and conveyed, and so render the same, and especially such portions thereof as shall be hereafter

462 acquired by the railroad company, its successors and assigns, available for the security and satisfaction of the said bonds, according to the intent and purposes herein expressed.

Fourteenth. Each of the bonds hereby secured is issued upon the express condition, to which each successive holder thereof expressly assents by receiving the same, that no stockholder or officer of the company shall be held personally liable to pay any part of the principal or interest of said bond, or the indebtedness evidenced thereby, by virtue of any law now in force or hereafter enacted, and each successive holder of any such bond, by receiving the same, expressly waives any right he may now or hereafter have to proceed against the stockholders or officers of the company for the payment of said bonds or the consideration thereof, or any part thereof, and agrees to have recourse for such payment only against the company and the property thereof.

Fifteenth. It is understood and agreed that the trustees shall not, nor shall either of them, be required to take any step in the execution of the trusts hereby created, or in the enforcement of their rights or powers hereunder, if in their or his opinion such action shall be likely to involve them or either of them in expense or liability, unless one or more of the bondholders shall, as often as required by the trustees, give them reasonable indemnity against the same, anything herein contained to the contrary notwithstanding, and that the trustees and their agents, attorneys and counsel shall be entitled to a reasonable compensation for all services rendered in connection with the trusts hereby created, or in pursuance of the provisions of this indenture, the railroad company agrees to pay to the trustees such compensation, and also all expenses reasonably incurred by the trustees hereunder, and the trustees shall have a lien therefor on the mortgaged property and the proceeds thereof.

It is further understood and agreed by and between the parties thereto, that the trustees shall not be answerable for any default or miscarriage of any agent or attorney by them or either of them appointed hereunder, if such agent or attorney was selected with reasonable care, nor for the default of each other, nor for any error or mistake of judgment made by them or either of them in good
463 faith, but shall only be liable each for its own individual wilful misconduct in the execution of said trusts; and it is further understood and agreed that the trustees are not required to insure any of the property hereby mortgaged unless placed in funds wherewith to effect such insurance, nor is either of them to see to the recording or filing of this indenture as a mortgage or deed of real or personal property, or to take any action, or to do any act made requisite by statute for protecting, perpetuating or keeping good the lien of these presents upon the whole or any part of the hereby-mortgaged railroad, real and personal property, fixtures, machinery and premises, save in their discretion, but the railroad company, its successors and assigns, shall and will, from time to time, do all things needful in that behalf.

The trustees, or either of them may resign and thereby become discharged from the trusts hereby created, by notice in writing to

be given to the railroad company and published once a week for two successive weeks in a newspaper in the cities of Chicago and New York, at least two months before such resignation shall take effect, but such resignation shall take effect immediately upon the appointment of a new trustee herein, in place of the trustee resigning, if such new trustee shall be appointed before the time limited by such notice.

In case at any time hereafter, either of the said trustees or any trustee hereafter appointed, shall die or resign, or be removed, or otherwise cease to act, or become incapable of acting, the successor or successors of such trustee shall be appointed by the surviving or remaining trustee, by an instrument in writing, subscribed by it, or if there be none, then by the railroad company, by an instrument under the seal of said company, or in case no such appointment shall be made within thirty days after a vacancy occurs, then by any judge of the United States circuit court for the seventh circuit upon the application of the holders of not less than one million dollars of principal of the said bonds then outstanding; provided, nevertheless, and it is hereby agreed and declared that in case the holders of a majority in interest of said bonds then outstanding, be dissatisfied with any trustee or trustees so appointed, a new trustee or trustees to be nominated by the holders of a majority in
464 interest of said bonds then outstanding shall be appointed in its or their place by a judge of said court upon application by the holders of such majority and eight days' written notice thereof given to said railroad company.

Any new trustee or trustees appointed hereunder shall execute, acknowledge and deliver to the remaining trustee, or to the trustees last in office, or if there be none, to the railroad company an instrument accepting such appointment hereunder, and thereupon such new trustee or trustees shall become vested with all the property, rights, duties and trusts of a trustee hereunder with like effect as if named as trustee herein, and the trustee or trustees removed or resigning, shall, on the written request of the new trustee or trustees, who may be appointed, immediately execute an instrument of transfer to vest in such new trustee or trustees upon the trusts herein expressed, all the property, privileges and rights hereunder, of the trustee or trustees so resigning or removed, and shall duly assign, transfer and deliver to such new trustee or trustees any moneys held hereunder for the further security of the bondholders.

It is understood and agreed that the word "trustee" or "trustees" as used in this instrument, shall be held and construed to mean the parties of the second and third parts, or their successor or successors, for the time being, in the trust hereby created, and the words "railroad company" shall be held and construed as including the lawful successors and assigns of the said company.

Meetings of the holders of the bonds secured by this instrument for the determination of, or action upon any of the provisions of this indenture which the majority in interest of the bondholders may have the right to decide, may be called by the trustees, and the bondholders may vote thereat *by* person or by proxy; or such

other regulations or by-laws in respect to such meetings may be from time to time established, altered or repealed by the bondholders acting by a majority in interest as to them shall seem expedient, and any bondholder attending any such meeting shall have the right to require that any act or resolution of the bondholders affecting the rights or remedies of or for the benefit of the
465 bondholders, or the duties of the trustees, or the interest of the trust thereby created shall be authenticated by the signatures of all the persons assenting thereto, as well as by a minute of the proceedings at such meeting.

Lastly. The parties of the second and third parts have become parties hereto in order to signify their acceptance of the trusts hereby created.

In witness whereof, the said party of the first part has caused its corporate seal to be hereto affixed and attested by its secretary, and this instrument to be signed in its corporate name by its president, and the parties of the second and third parts have each caused its corporate seal to be hereto affixed and attested by their respective secretaries, and this instrument to be signed in their respective corporate names by their respective presidents.

[Seal of the Lake Street Elevated Railroad Company.]

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By JOHN A. ROCHE, *President.*

Attest: O. W. BRUNER, *Secretary.*

[Seal of the American Trust and Savings Bank.]

THE AMERICAN TRUST AND SAVINGS BANK,
By G. B. SHAW, *President.*

Attest: J. R. CHAPMAN, *Secretary.*

[Seal of the Farmers' Loan and Trust Company.]

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest: E. S. MARSTON, *Secretary.*

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Alice G. Nelson, a notary public in and for said county, in the State aforesaid, do hereby certify that John A. Roche, per-
466 sonally known to me to be the same person whose name is subscribed to the foregoing instrument, as president of the Lake Street Elevated Railroad Company, and personally known to me to be the president of said The Lake Street Elevated Railroad Company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such president, and as the free and voluntary act of said The

Lake Street Elevated Railroad Company, for the uses and purposes therein set forth.

And I do hereby also certify that O. W. Bruner, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as secretary of the said The Lake Street Elevated Railroad Company, personally known to me to be the secretary of said The Lake Street Elevated Railroad Company, appeared before me this day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate seal of the said The Lake Street Elevated Railroad Company, as his free and voluntary act as such secretary, and as the free and voluntary act of said The Lake Street Elevated Railroad Company, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 3d day of May, A. D. 1893.

ALICE G. NELSON,
Notary Public.

[NOTARIAL SEAL.]

STATE OF ILLINOIS, } ss.:
County of Cook, }

I, Alice G. Nelson, a notary public in and for said county, in the State aforesaid, do hereby certify, that Gilbert B. Shaw, personally known to me to be the same person whose name is subscribed to the foregoing instrument as president of the American Trust & Savings bank, and personally known to me to be the president of said The American Trust & Savings bank, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such president and as the free and voluntary act of said The American Trust & Savings bank for the uses and purposes therein set forth.

467 And I do hereby also certify that Jas. R. Chapman, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as secretary of the said The American Trust & Savings bank, personally known to me to be the secretary of said The American Trust & Savings bank, appeared before me this day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate seal of said The American Trust & Savings bank as his free and voluntary act as such secretary, and as the free and voluntary act of said The American Trust & Savings bank, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 3d day of May, A. D. 1893.

ALICE G. NELSON,
Notary Public.

[NOTARIAL SEAL.]

STATE OF NEW YORK, } ss.:
County of New York, }

I, George H. Corey, a commissioner for the State of Illinois, duly commissioned and qualified, in and for said county, in the State aforesaid, do hereby certify that Roswell G. Rolston, personally

known to me to be the same person whose name is subscribed to the foregoing instrument as president of the Farmers' Loan and Trust Company, and personally known to me to be the president of said The Farmers' Loan and Trust Company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as such president, and as the free and voluntary act of said The Farmers' Loan and Trust Company, for the uses and purposes therein set forth.

And I do hereby also certify that Edwin S. Marston, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as secretary of the said The Farmers' Loan and Trust Company, personally known to me to be the secretary of said The Farmers' Loan and Trust Company, appeared before me this day in person and acknowledged that he signed and attested the said instrument and affixed thereto the corporate
468 seal of said The Farmers' Loan and Trust Company, as his free and voluntary act as such secretary, and as the free and voluntary act of said The Farmers' Loan and Trust Company, for the uses and purposes therein set forth.

Witness my hand and official seal, this 5th day of May, A. D. 1893.

[COMMISSIONER'S SEAL.] GEORGE H. COREY,
Commissioner for the State of Illinois,
Office, 66 Wall Street, N. Y.

UNITED STATES OF AMERICA, }
State of Illinois, } *ss:*

OFFICE OF SECRETARY.

I, William H. Hinrichsen, secretary of state of the State of Illinois, do hereby certify that the foregoing mortgage of the Lake Street Elevated Railroad Company *were* filed for record in the office of the secretary of state of the State of Illinois, on the 11th day of May, A. D. 1893, at 8 o'clock a. m., and duly recorded in Book No. 12 of Railroad Records at page 266.

In witness whereof, I hereto set my hand and affix the great seal of State at the city of Springfield, this 23rd day of May, A. D. 1893.

[Seal of the State of Illinois.]

W. H. HINRICHSEN,
Secretary of State.

STATE OF ILLINOIS, }
Cook County, } *ss:*

Filed for record, May 6, 1893, at 5.30 o'clock p. m., and recorded in Book 4256 of Records, page 230.

SAMUEL B. CHASE, *Recorder.*

Filed for record in the office of the secretary of state of Illinois, May 11, 1893, at 8 o'clock a. m., and recorded in Book 12, page 266.

W. H. HINRICHSEN,
Secretary of State.

Fees, $18.00. Paid.
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469 5. The said mortgage or deed of trust was and is the proper act and deed of said defendant, The Lake Street Company, by it authorized, made and delivered in all respects and conformity with law, and the same was duly recorded in the office of the recorder in Book 4256 of Records at page 230, and was also recorded in the office of the secretary of state of Illinois on the 11th day of May, A. D. 1893, and recorded in Book 12 of Railroad Records at page 266. The trusts therein and thereby created were duly accepted by your orator before the recording of the said deed of trust as aforesaid.

6. Said Lake Street Company thereupon, being thereunto by law duly authorized and in conformity with the terms of said trust deed, on or about the 7th day of April, A. D. 1893, executed, issued and delivered to your orator and said bank its certain sixty-five hundred first-mortgage bonds, secured by said deed of trust, dated that day, each for the sum of one thousand dollars ($1,000), aggregating the sum of six million five hundred thousand dollars ($6,500,000) of principal, and bearing number from one to sixty five hundred, inclusive. The said bonds were by your orator and said bank duly certified in accordance with the provisions of said trust deed, and have been by said Lake Street Company issued and sold or transferred for a valuable consideration, and are now outstanding in the hands of holders for value. The said bonds so issued as aforesaid were made payable on the 1st day of July, A. D. 1928, with interest thereon from January 1, A. D. 1893, at the rate of five per cent. per annum, payable semi-annually on the 1st days of January and July in each year on the presentation and surrender of the coupons annexed thereto as they severally became due.

7. Subsequently and in accordance with the provisions
470 of said trust deed there was executed by said defendant on account of the construction of additional railroad and branches and acquiring the same under the clause of said deed providing for the issue of eight hundred and fifty thousand dollars ($850,000) of bonds for each mile of fully equipped double-track road, and for the purpose of settling suits for damages against said Lake Street Company and for procuring right of way for extending its railroad, and for paying deficit of interest in the first two years' operation of said railroad after acceptance from the contractors, as is in and by said trust deed provided, about ten hundred and seventy-five bonds, aggregating the sum of one million and seventy-five thousand dollars ($1,075,000). Said ten hundred and seventy-five additional bonds were in like manner by your orator and said bank certified in accordance with the terms of said trust deed, to be issued under the provisions thereof, and have all been delivered to said Lake Street Company and by it issued and sold or disposed of for valuable considerations, and are now outstanding in the hands of holders for value.

8. The total number of bonds issued and outstanding for value in accordance with the terms of said mortgage, is, therefore, to the best information and belief of your orator, 7,575, of the par value of seven million, five hundred and seventy-five thousand dollars

($7,575,000). Said Lake Street Company paid the coupons on said bonds which matured on the 1st day of July, A. D. 1893, and on the 1st days of January and July, 1894. Of the interest coupons maturing January 1, 1895, attached to the bonds issued as aforesaid, less than one-third have been paid and cancelled; two-thirds thereof are now in the hands of said American Trust and Savings bank uncanceled, and it is claimed that said two-thirds are still out-
471 standing and unpaid. Default has been made by the Lake Street Company in the payment of all interest coupons payable on the 1st day of July, A. D. 1895, and the 1st day of January, A. D. 1896, which were attached to all of said bonds which have been issued and are outstanding as aforesaid, and all interest on all of said bonds due on said July 1, A. D. 1895, and January 1, 1896, remains overdue and unpaid. Demand was duly made for the payment of certain of said coupons as they matured, at the places appointed for the payment thereof, and payment of the same was refused. By reason of the matters and things hereinbefore alleged, there is due to the said trustees under the aforesaid deed of trust, all of said matured and unpaid coupons. The owners of the bonds so issued as aforesaid and of said defaulted coupons are numerous, and the names and residences of many of them are unknown to your orator.

9. On the 19th day of December, 1895, George Cleveland caused to be served on your orator a notice and demand in writing addressed to said American Trust and Savings bank and your orator, as trustees, and signed by said Cleveland as the owner of twenty-one (21) of said first-mortgage bonds of the par value of twenty-one thousand dollars ($21,000), and the unpaid coupons for interest due and to become due on said bonds. Your orator attaches hereto a copy of said notice and demand, marked Exhibit "A," and prays that the same may be taken as part hereof.

10. On December 20, 1895, said Cleveland caused to be served on your orator a further notice and demand in writing of the same general character as said Exhibit "A"; and on December 24, 1895, said Cleveland, together with thirteen other parties as owners
472 of six hundred and ten (610) of said bonds in all, caused a third notice of the same general charactor as Exhibit "A" to be served upon your orator. By said demands and notices served on December 20th and 24th, your orator was notified that said bondholders claimed that the income arising from said mortgaged property was being diverted and that they would hold your orator responsible for permitting such diversion. At about the same times said Cleveland caused duplicates of said notices and demands to be also served on said American Trust and Savings bank. Thereupon your orator made an investigation concerning the defaults under said mortgage, and the facts material to your orator's duty in the premises, and as the result of said investigation believes, charges and shows as follows:

11. On the maturity of the coupons falling due January 1, 1895, the said American Trust and Savings bank caused to be issued a

circular addressed to the holders of the coupons in words and figures following:

CHICAGO, *Jan.* 1, 1895.

To the holders of coupons hereinafter referred to:

Please take notice that the coupons of the bonds maturing this day of the Lake Street Elevated Railroad Company are taken up by the undersigned, the American Trust and Savings bank, trustee, expressly under the following conditions:

The Lake Street Elevated Railroad Company on Dec. 28, 1894, deposited certain moneys with this bank to meet said interest coupons due Jan. 1, 1895. Other parties now insist that those moneys belong to them, and that said moneys should be applied, not toward the payment, but only toward the purchase for them of said coupons. If it be hereafter judicially determined that their position is correct, then the said coupons so maturing Jan. 1, 1895, and taken up by this bank will be turned over to them as purchasers thereof,
473 uncanceled; otherwise said coupons will be treated as paid, and will be canceled by said bank. Unless you consent to the conditions of this notice the undersigned must decline to take up said coupons.

THE AMERICAN TRUST AND SAVINGS BANK, *Trustee.*

The undersigned, who is the holder and owner of — dollars of the coupons above referred to, hereby accepts and consents to all of the provisions and conditions of the foregoing notice.

—— ——.

Witness:

—— ——."

12. The amount of money on deposit in said bank to meet said coupons was about one hundred and seventy-eight thousand dollars ($178,000). The holders of about one hundred and sixty thousand dollars ($160,000) of said coupons consented to surrender their coupons on the conditions named in said notice, and received their money therefor. The holders of about eighteen thousand dollars ($18,000) of said coupons refused to transfer the same on the terms set out in said circular and were refused payment therefor, and default in the payment of said coupons not so surrendered under the terms of said circular continued until some time in the month of July, 1895, when certain of said coupons were paid, and the remainder of said coupons not so transferred, were paid in October, 1895. On January 27, 1896, your orator was notified by said Lake Street Company, as follows: "Since December 31st, the American Trust and Savings bank have been authorized and have cancelled $29,125 of the January 1, 1895, coupons, so that unpaid coupons would be reduced to that extent." Said bank now, therefore, holds uncancelled said coupons due January 1, 1895, received by
474 it on the conditions of said circular, to the amount of one hundred and thirty thousand dollars ($130,000), and said uncan-

celled coupons are claimed to be held by said bank and recognized by said Lake Street Company as unpaid and in default.

13. After said default in payment of said coupons maturing January 1, 1895, said Lake Street Company asked the holders of its said bonds to reduce or scale and exchange their said bonds so as to receive therefor sixty (60) per cent. of the par value thereof in debentures of the Lake Street Company, and fifteen (15) per cent. in so-called income bonds to be secured in the manner hereinafter set forth. Said Lake Street Company claimed that unless such readjustment of the bonds was made, it would be unable to pay the interest on its bonds, and thereupon said mortgage would be foreclosed, and that said readjustment would be more advantageous to the holders of the bonds than a foreclosure of said mortgage.

14. About February 21, 1895, certain holders of said first-mortgage bonds appointed in writing John R. Walsh, George H. Webster and A. O. Slaughter their attorneys to carry out such a scheme of reorganization, and said attorneys were authorized to make an agreement for the delivery of the bonds belonging to said bondholders to the Northern Trust Company as trustee, and providing that such bondholders should receive for their bonds so deposited debentures to be made and issued by the Lake Street Company, to the amount of sixty per cent. (60%) of the par value of the bonds they deposited, and unsecured income bonds to the amount of fifteen per cent. (15%) of the face value of the bonds so deposited. Said debentures were to bear five per cent. (5%) interest after January 1,
1895, payable semi-annually, to be guaranteed by said North-
475 western Elevated Railroad Company, to be negotiable and
to be secured by the first-mortgage bonds so deposited with the Northern Trust Company. For further particulars of said agreement and arrangement, your orator refers to a copy thereof attached hereto as Exhibit "B," and prays that the same may be taken as a part hereof.

15. The mortgagor having agreed to this arrangement, the holders of a majority of said mortgage bonds signed said agreement, and deposited their bonds with said Northern Trust Company. Said Northern Trust Company and said Lake Street Company then made a written instrument in accordance with the terms of said bondholders' agreement, and the Lake Street Company issued the debenture and income bonds so provided for. Said last-mentioned instrument between said Lake Street Company and said Northern Trust Company was made, as your orator is informed and believes, in substantial compliance with the bondholders' said agreement.

16. Prior to the first day of July, 1895, about six million dollars ($6,000,000) of said first-mortgage bonds had been deposited with and were held by said Northern Trust Company under the terms of said agreement and instrument, and a corresponding amount of said debentures and income bonds had been issued by said Lake Street Company in lieu thereof. Said debentures were guaranteed by the Northwestern Elevated Railroad Company as provided in said agreement, and said Lake Street Company in consideration of said guaranty agreed to grant and lease unto said Northwestern Company upon

certain conditions a right to use jointly with said Lake Street Company the part of the railroad of said Lake Street Company lying on Lake street between Wabash avenue and a point about
476 Franklin street, where it is intended that such Northwestern Company shall join its tracks with the railroad of said Lake Street Company. The said railroad of said Lake Street Company on Lake street, between Wabash avenue and Franklin street is more than two-fifths of and nearly half of a mile long, and constitutes a very valuable and necessary terminal for said railroad of said Lake Street Company. By leasing the right to use the same to said Northwestern Company and to the Union Elevated Railroad Company, said Lake Street Company has leased a valuable part of its property and the full use thereof by said other companies will greatly, and as your orator believes, injuriously affect the use thereof by said Lake Street Company and embarrass the traffic of said last-mentioned company.

17. On July 1, 1895, when the first installment of interest became due on said debenture bonds, the holders of more than one thousand (1,000) of said first-mortgage bonds, of the par value of more than one million dollars ($1,000,000) had not entered into said reducing or scaling agreement or accepted in place of their said bonds the said debentures and income bonds. Thereupon the interest coupons due on all debentures issued were paid on the date of their maturity, and default was made in the payment of all the coupons becoming due on July 1, 1895, on all of said first-mortgage bonds. Said Lake Street Company, however, claims that said interest due on said debentures was paid by said Northwestern Elevated Company and not by said Lake Street Company. No part of the interest due on any of said bonds, maturing on said first day of July, 1895, has since been paid, but the coupons therefor, together with said uncancelled coupons due January 1, 1895, have been ever since and still
477 are in default. On or about the 8th day of January, 1896, your orator received from said Northern Trust Company the following notice in writing addressed to your orator and said American Trust and Savings Bank of Chicago:

"CHICAGO, *December* 30, 1895.

To the American Trust & Savings bank, Chicago, and the Farmers' Loan & Trust Company, New York, trustees in and under the deed of trust executed by the Lake Street Elevated R. R. Co. under date of April 7, 1893.

GENTLEMEN: The undersigned is the holder of more than six thousand (6,000) of the bonds named in and secured by said trust deed, and respectfully calls your attention to the fact that every right of action, whether at law or in equity, under said trust deed is vested in you exclusively, and the undersigned hereby states that all of the bonds held by it are outstanding under the language and intent of said trust deed; that none of them have been canceled, paid or discharged in any part; also, that all of the coupons for the interest upon said bonds maturing on and after July 1, 1895, are held by the undersigned, and are unpaid and uncanceled, and the

undersigned further expresses to you that all statements which may have been made to you that any or all of the said bonds and coupons so held by the undersigned have been settled or canceled, or have ceased to be outstanding under said trust deed, are without foundation.

Yours truly,

THE NORTHERN TRUST COMPANY,
By BYRON L. SMITH, *President.* [SEAL.]

Attest: ARTHUR HEUTLEY, *Secretary.*"

18. On the 1st day of January, 1896, when the coupons evidencing the semi-annual installment of interest due on said debentures and on said first-mortgage bonds became due, the holders of about nine hundred (900) of said first-mortgage bonds of the par
478 value of nine hundred thousand dollars ($900,000) had not surrendered the same and accepted in lieu thereof the said debentures and income bonds in accordance with said proposition of said company. Thereupon said Lake Street Company again made default in the payment of all interest due on its said first-mortgage bonds, and at the same time the coupons due on all of said debentures were promptly paid at their maturity, said Lake Street Company claiming that said debenture coupons were paid by said guarantor the said Northwestern Elevated Company. Under said indenture under which said first-mortgage bonds are deposited with said Northern Trust Company, said first-mortgage bonds are held by the Northern Trust Company as security for the payment of the said debentures of the said Lake Street Company. Under this scheme, and by so keeping outstanding and uncanceled the overdue coupons of the bonds secured by said first mortgage, the debt secured by said mortgage is constantly increasing, and as the overdue coupons accumulate the amount of security properly apportionable to the bonds decreases and the security for said bonds is thereby seriously impaired.

19. It is against the interest of the said Northwestern Elevated Railroad Company, which claims to have paid the said debenture coupons maturing on July 1, 1895, and January 1, 1896, to have said mortgage foreclosed, for the reason that the undertaking of said Northwestern Elevated Railroad Company to guarantee said debentures is in consideration of the said grants from said Lake Street Company, which will be cut off by any foreclosure of said mortgage and also by reason of the fact that said Northwestern Elevated Railroad Company has an interest in the grant hereinafter referred to by said Lake Street Company for the joint use by
479 the Union Elevated Railroad Company of that portion of said Lake Street elevated railroad extending on Lake street from Wabash avenue to Franklin or Market street, for a period of twenty years, which will also be defeated by the foreclosure of said mortgage.

20. Your orator further avers on information and belief that as part of the arrangement by which the said Northwestern Elevated

Railroad Company agreed to guarantee the payment of the said debentures, it was agreed between the said Lake Street Company and the said Northwestern Elevated Railroad Company, that the net income of said Lake Street Company should be applied from time to time to the payment of the interest on said debentures, and that said guarantor should only be called upon to make up any deficiency in paying the same, thereby giving a preference to the holders of said debentures over the holders of said first-mortgage bonds who have not accepted said debentures. It is claimed by certain of the holders of said first-mortgage bonds that the debenture coupons paid in July, 1895, were paid in whole or in part by said Lake Street Company or with its moneys, and not by said Northwestern Elevated Railroad Company, and that, as evidencing such payment, said debenture coupons were canceled at the time of said payment.

21. During the period of said defaults in the payment of interest said Lake Street Company has also entered into an arrangement with the Union Elevated Railroad Company to grant to said Union Elevated Railroad Company the joint use with it of that portion of its elevated railroad extending on Lake street from Wabash avenue to Franklin or Market street for the period of twenty (20)
480 years, the entire consideration for said period being about four hundred and twenty thousand dollars ($420,000), to be paid to said Lake Street Company in advance, and to be applied by it to its own purposes. Said Lake Street Company has already received on account of said rental the sum of one hundred and twenty-five thousand dollars ($125,000), and has used and expended the same, but has not applied any part thereof to the payment of said mortgage indebtedness. The annual report of said Lake Street Company to its stockholders for the year ending December 31, 1895, also shows that there were outstanding on the date of said report bills payable of said company to the amount of $571,500, of which sum $475,000 is in addition to its unpaid coupons. In said annual report of said company it is also stated that said company, notwithstanding its said continuous defaults has let contracts for the equipping of its railroad with electricity, and that the cost of said electrical equipment is estimated at about $249,410. The equipment of said road with electricity will also involve the sale by the company at a large reduction on the original cost, of its present locomotive equipment.

22. Said American Trust and Savings bank is aiding said Lake Street Company in its endeavor to force the holders of said first-mortgage bonds who have not deposited their bonds with said Northern Trust Company and come into said reducing or scaling arrangement to consent to the same and to deposit their bonds with said Northern Trust Company under said arrangement. Certain of the holders of said first-mortgage bonds who presented their coupons due in July, 1895, and in January, 1896, to said American Trust and Savings bank for payment, were told by the officers and agents of said American Trust and Savings bank that unless they
481 consented to said scaling arrangement the interest on their

bonds would not be paid for many years, and said officers and agents urged said bondholders to consent to said scaling arrangement and to deposit their bonds with said Northern Trust Company.

23. The American Trust and Savings bank still holds in its possession in trust one hundred and thirty thousand dollars ($130,000) of the coupons secured by said trust deed, which coupons matured on the 1st day of January, 1895, and claims that although the original holders thereof have been paid, it still holds said coupons uncanceled and as outstanding obligations for the benefit of the persons who advanced the money to pay the same.

24. Your orator has requested said American Trust and Savings bank, named as cotrustee with your orator in said mortgage, to join with it as complainant in this bill of foreclosure, but said American Trust and Savings bank has declined and refused so to do or to take any action in the premises, and your orator has, therefore, made it a party defendant to this bill of complaint.

25. Said defendants, The Union Elevated Railroad Company, The West Chicago Street Railroad Company and The Northwestern Elevated Railroad Company, claim to have acquired some interest, by lease or otherwise, in and to the property conveyed by said mortgage; but your orator charges that if they have any such interest, they acquired the same subsequent and subordinate to the lien of said mortgage, and any and all rights of said Union Elevated Railroad Company, said West Chicago Street Railroad Company and said Northwestern Elevated Railroad Company in and to any part of said property, are subordinate to the lien of said mortgage.

482 26. Your orator is informed and believes, and, therefore, charges that said Lake Street Company is insolvent and wholly unable to pay its debts and obligations, that the property and premises on which said deed of trust is a lien, are very inadequate security for the payment of said bonds and overdue coupons; that part of the right of way of said Lake Street Company purchased by it, and on account of which many of said bonds are issued, has been abandoned as a right of way, and has become useless to said Lake Street Company for the purposes for which it was incorporated, and that said mortgaged property and premises are so situated, and are of such a nature that they cannot, nor can any part thereof, be sold in parcels without great injury to the interest of the holders of the bonds and coupons aforesaid. Your orator is advised and charges that pending suit and until a foreclosure sale can be had herein, and the proceeds thereof distributed, it is expedient and necessary that the franchises, property, premises and appurtenances so mortgaged as aforesaid, and all the rights, franchises and property of the said Lake Street Company of whatever name, nature and description, including all its money on hand and the earnings of the same, be placed in the hands of a receiver appointed herein by this court with such proper powers and control over the same as to the court shall seem right and equitable.

In consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law,

and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable:

And to the end, that the said defendants may true, full, direct and proper answer make to all and singular the premises (but not under oath, their answers under oath being hereby expressly
483 waived), and that as fully and particularly as if the same were here repeated, and they and each of them specially interrogated thereunto; that pending this suit a receiver may be appointed in this cause of all and singular the rights, franchises and property of every name and nature of said Lake Street Company with power and authority to operate said railroad and carry on the business of said Lake Street Company under the orders and protection of this court, with all the usual powers and duties of receivers in such cases, and with authority to proceed to recover by suit or otherwise, all property in the hands of other parties belonging to the said Lake Street Company, and all money justly due it and unlawfully withheld by any person on any pretense whatever, that an injunction may issue out of this court restraining the said defendants and each of them and their agents and servants from in any way interfering with the possession and control of such receiver over said property, and from selling, transferring, conveying or otherwise disposing of or incumbering any of the property, rights or franchises of the said Lake Street Company; that all rights and franchises, and all the property, real and personal, of said Lake Street Company may be declared subject to the lien of the said mortgage or deed of trust; that an accounting may be taken of the number and amount of bonds and overdue coupons outstanding under said mortgage or deed of trust, and of the interest due upon the same; that the said mortgage or deed of trust may be found to constitute a first lien on all the property of the said Lake Street Company for the payment of said bonds and coupons; that the said Lake Street Company may be decreed to pay the amount so found due on account of said overdue coupons, with costs, expenses and allowances, to be determined by the court within a short day to be fixed by the court;
484 that in default thereof all the property and franchises of the said Lake Street Company may be sold under a decree of this court and according to law and the practice of this court, to satisfy the entire amount so found due on all of said bonds and coupons; that out of the proceeds of said sale or the net earnings while in the hands of a receiver, there may be paid the costs of this proceeding and the costs and expenses of your orator in this suit, including proper solicitor and counsel fees, with a proper compensation to your orator for its own services as trustee to be allowed by the court; that the residue thereof may be applied to the payment of the principal and matured coupons of said bonds and interest thereon; that if there be any surplus it may be applied in such a way as this court may direct; that in case of such sale the said defendants and all parties claiming by, through or under them since the commencement of this suit, may be forever barred and foreclosed of and from any equity of redemption of, in or to the said property or franchises; that a proper deed may be made to the purchaser at such sale; that

any part of said decree remaining unsatisfied after the application of the proceeds of such sale, may be entered in this cause as a judgment against said Lake Street Company; and that your orator may have such other, further and different relief in the premises as the circumstances of the case may require, and as may be agreeable to equity.

May it please your honors to grant unto your orator a writ of subpœna, directed to the said The Lake Street Elevated Railroad Company, The Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, The West Chicago Railroad Company and The American Trust and Savings Bank, trustee, defendants therein, and thereby commanding them and each of
485 them to be and appear before this honorable court at a certain time and under a certain penalty therein to be limited, then and there to answer all and singular the premises, and further to stand to, perform and abide such order and decree herein as to the court may seem meet.

And your orator will ever pray, etc.

STATE OF ILLINOIS, } ss:
County of Cook, }

William Burry, being duly sworn, on oath says, that he is one of the solicitors for said complainant The Farmers' Loan and Trust Company and makes this affidavit on its behalf; that at its request he has carefully and fully investigated all the matters and things in the foregoing bill of complaint set forth, and is conversant therewith; that he verily believes from information derived from such investigation that all the matters and things in said bill set forth are true as therein stated.

—— ——.

Subscribed and sworn to before me this — day of ——, A. D. 1896.

——— ———,
Notary Public.

486 EXHIBIT A.

To the American Trust and Savings Bank of Chicago, Illinois, trustee, and the Farmers' Loan and Trust Company of New York City, cotrustees:

The undersigned, George Cleveland, is the owner of twenty-one of the first mortgage bonds of the par value of $21,000, and the unpaid coupons for interest due and to become due on said bonds, issued by the Lake Street Elevated Railroad Company of Chicago, Illinois, and secured by the certain trust deed dated April 7, 1893, executed and delivered by the Lake Street Elevated Railroad Company to you as trustees and cotrustees, respectively.

The interest coupons cut from the said bonds of the undersigned due January 1, 1895, were duly presented for payment at the office of said American Trust and Savings bank, Chicago, as provided in

said coupons, bonds and trust deed. Thereupon default was made in the payment of said interest coupons and such default continued until about the 22d day of June, 1895, when payment was made of said coupons.

The undersigned is informed that in like manner the interest coupons cut from others of said bonds to a large amount, due January 1, 1895, were duly presented for payment, and thereupon default was made in their payment, and such default continued until the latter part of July, 1895, when said coupons were paid.

The interest coupons cut from said bonds of the undersigned, due July 1, 1895, were duly presented for payment at the office of said American Trust and Savings bank, Chicago, as provided in said coupons, bonds and trust deed. Thereupon default was made in the payment of said interest coupons due July 1, 1895, and such default still continues;

The undersigned is also informed that in like manner the interest coupons cut from other of said bonds to a large amount due July 1, 1895, were duly presented for payment, and thereupon default was made in their payment and such default still continues.

487 I desire to call your attention to the following facts, which I am advised by counsel are material to your duties as trustees under said trust deed and to my rights as a holder of bonds secured by said trust deed.

When the January coupons came due, the holders, including the undersigned, were met with a demand by the mortgagor, the Lake Street Elevated Railroad Company, that they assign their coupons, to be kept alive instead of cancelled. On the refusal of the holders of any of the coupons to assign the same in accordance with this demand default was made in their payment and such default continued until the latter part of July, 1895, when, after repeated demands by different holders they were paid.

In the meantime default had been made in the payment of the July coupons and the company, while paying the January coupons, after about seven months' default, did not pay and has not yet paid the July coupons, and the default in the payment of these coupons still continues, notwithstanding repeated demands for payment by different holders.

The company has thus been continuously in default in the payment of interest on its bonds secured by the trust deed to you for the period of over eleven months.

Under date of February 21, 1895, an agreement in writing, was signed by certain holders of the bonds secured by the trust deed to you, whereby John R. Walsh, George H. Webster and A. O. Slaughter were appointed attorneys for the signers to enter into an arrangement whereby the bonds of the signers were to be delivered to the Northern Trust Company as trustee, and the holders were to receive in place of their bonds the debenture bonds of the mortgagor, the Lake Street Elevated Railroad Company, to the amount of sixty per cent. of the par value of the bonds delivered, and unsecured income bonds to the amount of fifteen per cent. of such par value.

The debenture bonds provided for were to draw interest at five per cent. from the 1st day of January, 1895, payable semi annually, on the first days of January and July in each year. It was also provided that the debenture bonds should be guaranteed by the Northwestern Elevated Railroad Company.

It was further provided by this agreement that it was the
488 purpose of the arrangement to permit the railroad company to issue, as against the bonds deposited under it, a negotiable debenture, which should rest as security on the bonds so deposited, and that the lien of the mortgage and the security thereunder for the bonds deposited should remain to the full amount of the face of the bonds and the interest thereon until such time as the debentures might be paid or all surrendered to the trust company for cancellation.

There were also provisions permitting other bondholders to sign the agreement and deposit their bonds from time to time on specified conditions.

For the other particulars of this agreement you are referred to the agreement itself, a copy of which will be furnished you on request if you have not already received a copy.

The railroad company having agreed to this arrangement with the signing bondholders, the holders of more than a majority of the bonds which had been issued under the trust deed signed the agreement and delivered their bonds to the trust company. An instrument was then executed by the trust company, defining the trust on which the bonds were held in accordance with the bondholders' agreement, and the debentures and the income bonds provided for were issued by the railroad company.

When the first installment of interest came due on these debenture bonds (July 1, 1895) the railroad company, notwithstanding it was still in default for its January interest on its first-mortgage bonds secured by the trust deed to you, paid the installment of interest on the debenture bonds, leaving the interest coupons on the bonds, in place of which they were issued, uncancelled in the hands of the trust company, and at the same time not only continued in default in the January interest due on the first-mortgage bonds, but also made default in the payment of the interest due July 1, 1895, on all the mortgage bonds the holders of which had not signed the agreement referred to and accepted the debentures and income bonds in place of their bonds.

As already stated the railroad company continued in default in the payment of its January interest on the mortgage bonds until
489 the latter part of July, 1895, and still continues in default in the payment of the July interest, notwithstanding repeated demands by different holders, both on the company for payment, and on you for the enforcement of payment.

Your attention is called to the fact that by the express terms of the trust deed to you the railroad company conveyed not only the railroad, franchises and other property, but also 'all and singular * * * the income, tolls, fares, profits and advantages belonging to the railroad company, appertaining to *or to arise or to accrue from*

the said railroad and the maint*ai*nance and operation thereof, * * * together with all and singular the tenements * * * and the reversion and reversions, remainder and remainders, *rents, issues and profits thereof.*'

Your attention is also called to the fact that the condition of that mortgage is that the railroad company 'shall well and truly pay or cause to be paid to the holders thereof the principal of all the bonds secured or intended so to be, and *the interest moneys to become due* thereon, respectively, at the time and in the manner specified in the said bonds and coupons.'

Your attention is also called to the fact that the railroad and the 'income, tolls, fares, profits, etc.,' so conveyed to you in trust '*for the equal pro rata use,* benefit and security of each and every the persons or corporations who may be or become holders of the abovementioned bonds, numbered from one (1) to the highest number that may be issued, inclusive, *without any preference or priority* of any one bond over another by reason of priority in the time of issue or negotiation thereof *or otherwise howsoever.*'

Your attention is also called to the fact that by the express terms of the trust deed the railroad company is only entitled to the possession and use of the property, and 'the rents, income and profits thereof' '*until* default shall be made by the railroad company, its successors or assigns, in the payment of the *principal or interest* of the said bonds hereby created, *or some of them,* or in the performance of some other of the covenants, stipulations or provisions on its part herein contained.'

Your attention is also called to the fact that under the ex-
490 press terms of the trust deed, if default is made 'in the payment of any interest moneys mentioned in the said bonds and coupons when the same become due and is demanded, whether said default shall have continued for said period of six months or not,' you are authorized and empowered to take full possession of the railroad and all the property mortgaged, and 'hold, use, manage, maintain and operate said railroad,' and 'collect and receive all moneys and revenues arising from such management' and 'next to the payment *pro rata of the interest* due and in default,' to apply the income to the purposes specified.

Your attention is also called to the fact that by said trust deed the railroad company expressly covenants that 'immediately upon the commencement' by you 'of any suit or other legal proceedings to obtain possession of' the property mortgaged, it will waive service of process, enter its voluntary appearance and consent to the entry of a judgment for the recovery and possession of the property mortgaged 'and every part thereof.'

I am advised by counsel that by the action of said railroad company and the holders of the majority of the mortgage bonds issued under said agreement of February 21, 1895, and the issue of said debentures and said payment of interest thereon and the other facts connected therewith, the holders of said majority of the bonds became and are disabled from exercising the several powers vested by said mortgage in the majority of the bonds outstanding.

I am further advised by counsel that said railroad company has, by its action, waived the benefit of and abrogated said provisions, and that it is your duty as trustees, irrespective of said provisions, to perform the duties and exercise the powers vested in you by said trust deed, 'for the equal *pro rata* use, benefit and security' of all the bondholders, and on default in the payment of interest to take appropriate action to enforce payment and to prevent any diversion of the income to other purposes than the equal *pro rata* payment to the mortgage bondholders and otherwise enforce the provisions of said trust deed.

You are hereby notified that as the holder of twenty-one
491 bonds secured by said trust deed, I shall hold you and each of you to strict accountability for the discharge of the duties imposed on you by said trust deed, and that in the event of the use or other diversion of any of the income of said railroad, after any default in the payment of interest, to other purposes than the payment of the overdue interest on the first-mortgage bonds of said company, or other purposes not authorized by said trust deed which you could have prevented or can prevent by the performance of any duty imposed on you by said trust deed, whereby the mortgage debt, or any part thereof, is left unpaid to my injury as holder of said bonds, I shall hold you and each of you liable therefor.

I further demand that you proceed, by suit or suits or other appropriate remedy, to enforce said trust deed and the rights of the bondholders under the same for the equal benefit of all the bondholders, hereby tendering any evidence that you may require under said trust deed as to my ownership of said bonds and coupons and also tendering such indemnity or security as shall be satisfactory to you against any costs, expense or other liability by reason of the action requested.

Upon receipt of this notice and demand, you will please advise George Cleveland, 175 Park avenue, Orange, New Jersey, or my attorneys, Messrs. Herrick, Allen & Boyesen, 107 Dearborn street, Chicago, what proof, security or indemnity you require.

Dated December 19, 1895.

GEORGE CLEVELAND,
Owner of Twenty-one of said Bonds of the Par Value of $21,000.

Schedule of Numbers of said 21 *Bonds.*

Nos. 2069 to 3080, inclusive			12	bonds.
" 3164 " 3167	"		4	"
" 4581 " 4585	"		5	"
Total			21	bonds

492 EXHIBIT B.

Whereas, the undersigned are the holders of the number of bonds below set opposite their respective names, issued by the Lake Street Elevated Railroad Company, a corporation under the laws of the State of Illinois, and dated the 7th day of April, 1893, and secured

by a mortgage made by the said railroad company April 7, 1893, and recorded May 6, 1893, in the recorder's office of Cook county, Illinois, in Book 4256 of Records, at page 230, and recorded in the office of the secretary of State of Illinois, May 11, 1893, and there recorded in Book 12, at page 266, running to the American Trust and Savings Bank of Chicago, Illinois, and the Farmers' Loan and Trust Company, of the State of New York.

And whereas, said railroad company was unable to pay the interest due upon said bonds January 1, 1895, and it is proposed that the holders of said bonds shall arrange to scale the same so as to make the bonded indebtedness of the said company, — will be able to pay or cause to be paid the interest upon the bonded indebtedness to be so reduced.

Now, therefore, this instrument witnesseth: That the undersigned, each for himself and not for the others, do hereby make, constitute and appoint, and by these presents do make, constitute and appoint John R. Walsh, George H. Webster and A. O. Slaughter, of the city of Chicago, Illinois, the true and lawful attorneys of each of the parties hereto, for and in the name and place and stead of each of the parties hereto, to negotiate with the Lake Street Elevated Railroad Company for the purpose of arranging an adjustment of the said bonded indebtedness.

First. Said attorneys are authorized to agree with the said railroad company upon an arrangement whereby the bonds held by each of the parties hereto may ultimately be taken up on the basis of (60%) sixty per cent. of the par value of the face of said bonds in debentures, and fifteen per cent. (15%) of the par value of said bonds in unsecured income bonds.

Second. The Northern Trust Company, a corporation
493 under the laws of the State of Illinois, is hereby made the trustee for the purpose of carrying out and effecting the adjustment of such bonded indebtedness, and all bonds represented and signed for by the parties hereto shall be deposited with the said trust company.

Third. In making such agreement concerning said bonds upon said basis, said attorneys are authorized to arrrange for and on our behalf for fifteen per cent. (15 %) in unsecured income bonds of said railroad company, and sixty per cent. (60 %) in debenture obligation- of said railroad company, secured by the bonds deposited with said trust company hereunder, which said debentures so to be issued by said railroad company shall be issued upon the basis of 60 % of the par value of the bonds deposited hereunder, and shall draw interest at five per cent. (5 %) per annum from the 1st day of January, A. D. 1895, and payable semi-annually on the 1st days of January and July, in each year, and with coupons thereto attached. The lien of said mortgage, and the security thereunder for the bonds so deposited, shall remain to the full amount of the face of the bonds and the interest thereon, until such time as said debentures may be paid or all surrendered to said trust company for cancellation.

The purposes and intent of this instrument being to permit said

railroad company to issue as against the bonds so deposited a negotiable debenture which shall rest for security upon the bonds so deposited, with all the rights which said bonds deposited have under said mortgage, and also to the extent of fifteen per cent. (15 %) to issue the unsecured income bonds above mentioned.

Fourth. Upon the issue of the debentures and income bonds, as aforesaid, an agreement shall be made by said railroad company which shall provide:

a. That no additional bonds shall be issued under said mortgage of April 7, 1893, or certified by the trustees under said mortgage for the purpose of paying interest.

b. That no bonds shall be issued hereafter under said mortgage for construction purposes except for the actual cost of such construction, and the par value of all bonds so hereinafter issued shall only equal the cost of such construction. Before the issuing
494 of any such bonds for construction said railroad company shall submit to said trustees under said mortgage, contracts, vouchers and statements under oath of the president of the said railroad company, showing the actual cost, which said vouchers and statements shall be subject to the inspection and examination of any bondholder.

c. The principal and interest payable under said debentures, as aforesaid, shall be guaranteed in writing by the Northwestern Elevated Railroad Company, a corporation under the laws of the State of Illinois, by a guarantee in such form and upon such terms as may be agreed upon by said attorneys and said railroad company.

Fifth. In case this agreement is not signed by the holders of at least three million eight hundred thousand dollars ($3,800,000) *dollars* par of the bonds now issued under said mortgage on or before the first day of April, A. D. 1895, or in case at least three thousand eight hundred (3,800) bonds are not deposited hereunder, on or before the first day of April, 1895, then this instrument shall be and become inoperative and the respective bonds shall be returned to the respective depositors thereof.

Sixth. The parties signing this agreement shall not be liable hereunder to any person or persons, or corporation whatsoever, for or on account of any expense or other charge made or incurred in originating or in carrying out the provisions of this power, nor shall the said John R. Walsh, George H. Webster and A. O. Slaughter, or any of them, be liable for any cost or expense hereunder, or in any manner whatsoever, but said attorneys shall require said railroad company in order to make the adjustment as herein provided to pay all the expenses and charges necessary or proper in relation hereto, including all charges of the trustee and necessary attorney fees.

Seventh. The form, terms and time of payment of said debentures and income bonds to be such as said attorneys and said railroad company may be able to agree upon; time of payment not, however, to extend beyond the date of maturity of the mortgage bonds, and the income bonds to draw interest at five per cent. per annum (5 %) from January 1, 1895, payable only when earned

out of the net earnings of each current year, beginning Jan-
495 uary 1, 1895, over and above all expenses of the operation and maintenance of the lines, property and plants of the company, taxes, insurance and all other fixed charges, including interest on all bonds from time to time outstanding under said trust deed, and said interest not to be cumulative.

Eighth. If all of the bonds and interest coupons at this date issued under said mortgage by said railroad company are deposited with said Northern Trust Company for the purpose of issuing said debentures, then and not before, the said trust company may cancel and deliver to said railroad company for destruction forty per cent. (40%) of the par value of said mortgage bonds, and the coupons therewith, and the remaining sixty per cent. (60%) shall in such case be held by said trust company as security for said debentures, and said trust company may thereupon deliver to said debenture-holders such number of said sixty per cent. (60%) of bonds as will equal the par value of such debentures surrendered and canceled, upon the Northwestern Elevated Railroad Company guaranteeing the payment of principal and interest of said sixty per cent. (60%) of the bonds, interest to be adjusted as of the time of the exchange.

Ninth. The terms and conditions upon which said Northern Trust Company shall accept and execute the trusts in relation to said bonds and debentures shall be expressed in a written instrument between said attorneys, said Lake Street Elevated Railroad Company and said Northern Trust Company.

Tenth. Any party holding any of said mortgage bonds may become a party hereto and have the benefit hereof at any time after said three thousand eight hundred bonds have been signed for and deposited as aforesaid by signing this instrument and depositing his bonds as herein required, provided said party shall so sign and deposit his bonds within thirty days after said thirty-eight hundred bonds shall be signed and deposited as aforesaid.

Eleventh. The deposit of said mortgage bonds with said Northern Trust Company shall pass and transfer to it the full and complete title to the respective bonds in trust for the purpose hereby intended, and in the said instrument of trust to be more fully expressed.
496 Said trust company is to certify in form satisfactory to it the *the* respective debentures which shall be issued in accordance with the intent thereof, as being the debentures entitled to share in the security afforded by said deposit of said bonds, and immediately upon the certification and issue of the respective debentures the legal holders of the debentures from time to time shall be and become entitled to their proportionate share of the security afforded by the whole deposit of bonds, and the original depositors of the respective bonds shall have no further interest in the bonds deposited save and except as they may be holders of debentures; that is to say the security shall follow the ownership of the debentures, and said income bonds shall have no relation to or share in the security furnished by the mortgage bonds deposited.

Twelfth. In case of the death, absence, resignation or inability to act of either of said three attorneys the remaining attorneys, or if

they fail to appoint, said Northern Trust Company may appoint a successor or successors to such attorneys, and said attorneys shall have power to add two or more additional attorneys to act with them hereunder, and in case of such addition the majority shall govern and control. And the attorneys hereunder named, at their option, extend the time for bondholders to come in hereunder by written notice to said Northern Trust Company, and such published notice as the attorneys may deem necessary.

Thirteenth. The said John R. Walsh, George H. Webster and A. O. Slaughter may do whatever else they may deem necessary or advisable in order to carry out the purpose, spirit and intent of this agreement, and if necessary in order to carry out the purpose hereof, may proceed under the power in said mortgage contained, and use the bonds deposited to foreclose said mortgage, or take such steps or other means that may be necessary in order to secure the intent and purpose hereof, and for such purpose may bring suit or suits as the holders of said bonds and compromise, settle or adjust the same after such suits have begun as they shall deem advisable or necessary in order to carry into effect the intent hereof, hereby giving and granting unto said John R. Walsh, George H. Webster and
497 A. O. Slaughter as full power and authority to do and perform all and everything and act whatever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as each or all the parties might or could do if personally present at the doing thereof, hereby ratifying and confirming all that our said attorneys shall lawfully do or cause to be done by virtue hereof.

Principal and interest of debentures and income bonds to be payable in gold coin of the United States of the present standard of weight and fineness.

City of Chicago, Feb. 21st, A. D. 1895.

Names.	P. O. address.	Number of bonds.

"UNITED STATES OF AMERICA, }
498 *Northern District of Illinois, Northern Division,* } ss.:

The United States of America to Lake Street Elevated Railroad Company, the Union Elevated Railroad Company, the Northwestern Elevated Railroad Company, the West Chicago Street Railroad Company, and the American Trust & Savings Bank, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of March next, to answer the bill of complaint of the Farmers' Loan and Trust Company this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and

decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this [SEAL.] 30th day of January, in the year of our Lord one thousand eight hundred and ninety-six, and of our Independence the 120th year.

S. W. BURNHAM, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they
499 and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk.*"

"*Marshal's Return.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

I have served the within writ in the following manner, to wit, upon the Lake Street Elevated Railroad Company by delivering a true copy of same to D. H. Louderback, president of said railroad, on the 18th day of February, A. D. 1896.

JOHN W. ARNOLD,
U. S. Marshal,
By SOL. VAN PRAAG, *Deputy.*

(Endorsed:) Filed Feb. 20, 1896. S. W. Burnham, clerk."

500 Q. Mr. Louderback, will you state when the subpœna in that case was served upon you?

A. February 18, 1896, at 4 o'clock p. m.

Mr. MAYER: That is a subpœna in the foreclosure case. You call it a subpœna. It is a summons, isn't it?

Mr. KNIGHT: Called a summons in the State courts; yes.

I will offer in evidence bill filed by the Lake Street Elevated Railroad Company against William Ziegler and others in the circuit court of Cook county on December 31st, 1895, together with the order of the court in that case granting a writ of injunction.

Mr. BURRY: Objected to as immaterial.

The COURT: It was a circuit-court case.

Mr. KNIGHT: This is the bill that was filed in the circuit court.

The COURT: What has become of that?

Mr. KNIGHT: It is still pending in the United States court.

Mr. MAYER: The injunction in that case is still in force.

Mr. KNIGHT: And the amended bill in the same case.

Said last-mentioned bill and amended bill filed by the Lake Street Elevated Railroad Company against William Ziegler and others in said circuit court of Cook county, Illinois, were thereupon read in evidence by counsel for complainant and were respectively as follows, to wit:

501 "*Bill of Complaint.*

STATE OF ILLINOIS, } ss.:
Cook County, }

In the Circuit Court of Cook County.

Your orator, The Lake Street Elevated Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Illinois, respectively represents unto your honor- that it is a corporation duly incorporated and existing under and by virtue of an act of the legislature of the State of Illinois providing for the incorporation of associations that may be organized for the purpose of constructing railways, maintaining and operating the same, and for prescribing and defining the duties and limiting the powers of such corporations when so organized, approved and in force March 1, 1872, as by the articles of incorporation of your orator, ready to be produced in court, will more fully and at large appear; that your orator was organized in the month of August, 1892, with a capital stock of $5,000,000, divided into 50,000 shares of $100 each, and that in the month of April, 1893, the capital stock of your orator was by due process of law increased to $10,000,000 and consisting of 100,000 shares of the par value of $100 each.

Your orator further shows unto your honors that on, to wit, the 4th day of February, 1893, your orator entered into a contract
502 with one Frank L. Underwood and one Willard R. Green, doing business as contractors under the firm name and style of Underwood & Green, under and by virtue of which said contract the said Underwood & Green agreed to furnish the labor and material for and construct, build, and complete the railroad of your orator and furnish forty-eight (48) single passenger stations upon the line of said railroad, including terminal stations, building certain shops, sheds, and engine-houses, as in said contract set forth, and to also furnish twenty-five (25) locomotive engines and one hundred and twenty-five (125) passenger cars for use by your orator upon its said railroad when completed, all in accordance with said contract between your orator and said Underwood and Green; which said contract was reduced to writing and dated the 4th day of February, 1893.

That under and by virtue of said contract said Underwood & Green were to receive, as compensation for the building of said railroad, stations, workshops, cars, and locomotives, the sum of $11,710,000, payable $6,500,000 thereof in the fully paid capital stock of said railroad company at par, or such an amount of said capital stock as would, with the stock of said railroad company then outstanding, make the total capital stock of said company

$10,000,000, and $5,150,000 thereof in first-mortgage five per cent. gold bonds of the said railroad company at par, the said bonds being a part of a proposed issue of $6,500,000 par value of bonds, each of said bonds to be for the sum of $1,000, payable in gold coin of the then present standard of weight and fineness on the first day
503 of July, 1930, with interest at the rate of five per cent. per annum, payable in like gold coin on the first days of January and July of each year, and all of which bonds were to be equally secured by mortgage or deed of trust, to be a first lien upon all the property, rights, ordinances, and franchises of said railroad company, whether then held or thereafter acquired by it; $60,000 thereof in cash, as in said contract provided, as by said written contract between said Underwood & Green and your orator, ready to be produced in court, will more fully appear, a copy of which said contract is hereto attached, marked 'Exhibit A,' and made a part of this bill of complaint.

Your orator further shows unto your honors that in accordance with said contract the capital stock of your orator was increased from $5,000,000 to $10,000,000, as hereinbefore set forth, and that your orator did duly make, execute, acknowledge, and cause to be recorded, in accordance with law, its first mortgage or deed of trust, by which your orator conveyed to the American Trust and Savings bank, a corporation duly organized and existing under the laws of the State of Illinois, as trustee, and the Farmers' Loan and Trust Company, a corporation duly organized and existing under the laws of the State of New York, cotrustee, all of its property and assets of every name, nature, and description which it then, at the date of the giving of said mortgage or trust deed, owned or in which
504 it had any interest, and all property and assets of every name, nature, and description which it might thereafter acquire, as by said mortgage or trust deed, ready to be produced in court, will more fully and at large appear, and a copy of which said mortgage or trust deed is attached hereto, marked 'Exhibit B,' and made a part of this bill of complaint.

Your orator further shows unto your honors that the said Underwood & Green nor neither of them did not have the money, funds, or property with which to build said railroad, stations, machine shops, or to build or purchase said cars or locomotives, and that the said Underwood & Green did not have the money, funds, or property with which to perform their said contract so made with your orator, as aforesaid, but that the said Underwood & Green proposed to and did undertake to raise the funds necessary to carry out said contract with your orator by means of what is commonly known and styled an underwriting agreement—that is to say, that the said Underwood & Green proposed to enter into an agreement or contract with such persons, firms, or corporations as they could induce to make such agreement with the said Underwood & Green, by which agreement the said persons, firms, or corporations were to agree to purchase from the said Underwood & Green from time to time a portion of the stocks and bonds to be earned by Underwood & Green under and by virtue of their said contract with your orator

at a certain fixed price, and that in pursuance of such plan or scheme the said Underwood & Green caused to be prepared
505 a certain underwriting agreement, a copy of which said underwriting agreement is attached hereto, marked 'Exhibit C,' and made a part hereof.

Your orator further shows unto your honors that at the time said contract between your orator and said Underwood & Green was made, as aforesaid, and at the time that the capital stock of your orator was so increased, as aforesaid, and at the time that said underwriting agreement was so prepared, as aforesaid, William Ziegler, one of the defendants hereinafter named, was a director of the Lake Street Elevated Railroad Company, and participated as such director in all of the acts and doings of the said Lake Street Elevated Railroad Company; that the said William Ziegler was first elected a director of your orator on the 23rd day of December, 1892, and thereupon, upon his said election, accepted such position as a director of your orator, and assumed the duties appertaining thereto, and continued to act as such director until the 9th day of January, 1894, and that on the 9th day of January, 1894, the said William Ziegler was re-elected a director of your orator for the period of three years, and accepted such position as a director of your orator, and assumed the duties appertaining thereto, and continued to exercise his duties and powers as such director.

Your orator further shows unto your honors that before the said contract between your orator and the said Underwood & Green was made, executed, and delivered, as aforesaid, or at the time
506 that said contract was made, executed, and delivered, as aforesaid, or shortly thereafter the said Underwood & Green entered into a secret agreement or understanding with the said William Ziegler, the said Ziegler then being a member of the board of directors of your orator, as aforesaid, in and by which said agreement or understanding the said Ziegler was to become a subscriber to the said underwriting agreement, and was to subscribe for a large number of bonds, and was to agree to take from the said Underwood & Green a large number of bonds to be received by said Underwood & Green under and by virtue of their said contract with your orator, and that it was secretly agreed between the said Ziegler and the said Underwood & Green that the said Ziegler was to receive from said Underwood & Green large benefits or advantages which other signers of said underwriting agreement did not receive, and that it was secretly agreed between the said Underwood & Green and said Ziegler that said Ziegler should receive from the said Underwood & Green stock of your orator aggregating 125 per cent. of the face value of the bonds so subscribed for by said Ziegler under said underwriting agreement, and in addition thereto that the said Ziegler was also to receive from said Underwood & Green a large amount of stock of your orator and a large number of the bonds to be issued by your orator, as aforesaid, in excess of the bonds to be subscribed for by said Ziegler, and 125 per cent. of stock in addition thereto. Your orator further shows unto your honors that said

Ziegler was in other ways unknown to your orator, and while
507 such director, as aforesaid, interested with said Underwood & Green in the proceeds derived by said Underwood & Green from the contract obtained by said Underwood & Green with your orator for building its elevated railroad aforesaid and equipping the same, and derived large profits and gains therefrom, the exact amount of which is unknown to your orator.

Your orator further shows unto your honors that the said Ziegler, being a director of your orator, as aforesaid, knew or should have known that it would not cost to complete and equip said line of railroad, stations, shops, cars, and locomotives as provided by said contract between your orator and said Underwood & Green anywhere near the sum named in said contract, and that the sum named in said contract was largely in excess of the actual cost of said railroad and equipment; yet, notwithstanding said fact and having said secret or private agreement with said Underwood & Green, the said Ziegler joined with the other directors of said company in letting said contract to said Underwood & Green, as hereinbefore *said* forth.

Your orator further shows unto your honors that in said contract between your orator and said Underwood & Green it is provided that in case said Underwood & Green should obtain an underwriting agreement in good faith and by responsible parties for said bonds and said stock so to be paid them, as aforesaid, under said contract within a reasonable time not to exceed thirty days
508 to the amount of four million dollars of said bonds at ninety cents on the dollar, with the provision that said board of directors of your orator should have the right to extend said period for said underwriting to such time as they might deem just and reasonable, and said contract also provided that if said underwriting was not obtained within the time as provided by said contract or within such extension of time, then said contract should become null and void, and all securities and property received by said Underwood & Green thereunder would be returned to your orator; all of which is more particularly set forth in said contract, reference to which is hereby made.

And your orator further shows unto your honors that the said Underwood & Green did not secure within said thirty days, nor within any extension of such time by the board of directors of said railroad company, in good faith and by responsible parties, the underwriting of $4,000,000 of said bonds.

And your orator further shows unto your honors that said Ziegler knew of the provisions of said contract between said Underwood & Green and your orator and knew of the provisions of said underwriting agreement; yet, notwithstanding the fact that said $4,000,000 of bonds were not subscribed for in good faith by parties financially responsible within the time fixed under said contract, the said Ziegler permitted and allowed, as a director of said company, said Underwood & Green to proceed with said contract.

509 And your orator further shows unto your honors that the said Underwood & Green did not build and equip said rail-

road within the time fixed under said contract, viz., November 24th, 1893, but wholly failed and neglected so to do; and your orator shows unto your honors that such neglect and failure was well known to said Ziegler as a director in said company; yet, notwithstanding such fact, the said Ziegler, as a director of said company, permitted and allowed said Underwood & Green to proceed with the work of completing said contract, as aforesaid.

Your orator further shows unto your honors that said Underwood & Green did finally and long after the time limited in said contract complete the said railroad and equipment, but did not complete and equip the same in accordance with the terms and conditions of said contract; but your orator shows unto your honors that said Ziegler, although all these facts were well known to him as a director in said company, permitted the said Underwood & Green to receive from said company the bonds, stock, and cash as provided by said contract, and that there was issued and delivered to said Underwood & Green, with the knowledge and consent of the said Ziegler, as a director in said company, the bonds, stock, and cash as provided in said contract.

And your orator further shows unto your honors that of the bonds so received by the said Underwood & Green, as aforesaid, the said Underwood & Green, in accordance with the said secret
510 understanding and agreement with the said Ziegler, or in accordance with other secret agreement or agreements made with said Ziegler, turned over and delivered to the said Ziegler 500 bonds and $625,000, par value, of the stock of your orator and, in addition thereto, a large number of the bonds and a large amount of the stock issued to them, as aforesaid, the exact number of which bonds and the exact number of which stock is to your orator unknown.

Your orator further shows unto your honors that the said Ziegler, as one of the directors of said railroad company, was responsible and accountable to your orator for the faithful, impartial, and honest discharge of his duty as a director of said railroad company, but, notwithstanding such duty on the part of said Ziegler, he entered into said secret and collusive arrangement or agreement with the said Underwood & Green, as above set forth, and that your orator was entitled to the bonds and stock so turned over to said Ziegler by said Underwood and Green by virtue of the secret agreement or agreements between said Underwood and Green and said Ziegler, and that by reason of the fact that said contract was let at an exorbitant price by the aid and co-operation of said Ziegler your orator was deprived of large amounts of money, stock, and bonds justly, legally, and lawfully its property.

And your orator charges that said Ziegler is liable to and accountable to your orator for the bonds, stocks, money, and
511 other properties which the said Ziegler received from said Underwood and Green by virtue of said secret agreement or agreements, and is liable to and accountable to your orator for the loss and damage your orator sustained by reason of said Ziegler's failure to perform his duty as a director of said railway company,

whereby it was deprived of a large amount of bonds, stock, cash, and other valuables.

Your orator further shows unto your honors that of the bonds so received by the said Ziegler from the said Underwood and Green, as aforesaid, the said Ziegler has sold or transferred or placed a portion thereof in the possession of George Cleveland, a portion thereof to Effingham H. Nichols, a portion thereof to William H. Van Anden, a portion thereof to Charles Smith, a portion thereof to James B. Ryan, a portion thereof to William R. Peters, a portion thereof to Jere Johnson, Jr., a portion thereof to James V. S. Woolley, a portion thereof to Oliver A. McMahon, a portion thereof to Edward Entwistle, a portion thereof to Lawrence E. Eilis, and a portion thereof to Lizzie Wentworth Wright; and your orator shows unto your honors that the said Ziegler and said other parties last named now claim to be the owners of bonds as follows:

William Ziegler, of 400 bonds; George Cleveland, of 21 bonds; Effingham H. Nichols, of 55 bonds; William M. Van Anden, of 50 bonds; Charles Smith, of 15 bonds; James B. Ryan, of 12 bonds;
512 William R. Peters, of 13 bonds; Jere Johnson, Jr., of 10 bonds; James V. S. Woolley, of 10 bonds; Oliver A. McMahon, of 5 bonds; Edward Entwistle, of 5 bonds; Lawrence E. Ellis, of 4 bonds, and Lizzie Wentworth Wright, of 5 bonds; but whether the 600 bonds here mentioned are all of the bonds received by said Ziegler by virtue of this said secret agreement or agreements your orator is not informed and has no means of ascertaining, except by an accounting under the order and direction of this honorable court.

Your orator further shows unto your honors that it is not informed as to whether the said persons above named did actually purchase the bonds now claimed to be owned by them of the said Ziegler and pay a consideration therefor, or whether the said Ziegler transferred said bonds to said persons merely for the purpose of making it appear that such persons above named were the owners of such bonds, the said Ziegler remaining in truth and in fact the real owner thereof, but your orator charges the fact to be upon information and belief that the said persons above named and each of them received said bonds now claimed to be owned by them respectively, as aforesaid, from the said Ziegler, well knowing all the facts and circumstances under which the said Ziegler received said bonds, said parties being the intimate friends and business associates of said Ziegler, and said parties have acted and are now acting in concert with said Ziegler in all matters pertaining to said bonds.

Your orator further shows unto your honors that it has
513 offered to pay to the said Ziegler the amount which said Ziegler paid for the said bonds and stocks so obtained by him from Underwood and Green, as aforesaid, together with legal interest thereon from the time that he so paid out said amount and demanded that the said Ziegler surrender up to your orator the bonds and stocks so obtained by him, as aforesaid, but your orator shows unto your honors that the said Ziegler has not accepted such proposition, and that said Ziegler and those to whom he has trans-

ferred bonds, as aforesaid, now claim to be the legal and lawful owners of such bonds and entitled to the possession thereof, and demand that your orator shall recognize the said Ziegler and the other persons above named as the legal and lawful owners of such bonds, and pay to the said William Ziegler and the other persons above named interest upon such bonds so held by them, as aforesaid, but your orator shows unto your honors that it has refused to pay to the said Ziegler and the other persons above named interest upon said bonds so held and obtained by them as hereinbefore set forth, and that the said Ziegler and the other persons above named are now conspiring together to induce the American Trust & Savings bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, being the trustee and cotrustee named in the mortgage hereinbefore mentioned and described, to take possession of the elevated railroad of your orator, together with all the appurtenances and equipments thereunto belonging and appertaining, or to
514 proceed and foreclose the said mortgage or trust deed by reason of the non-payment to the said Ziegler and the other persons above named of interest upon the bonds so obtained and held by them respectively as above set forth.

And your orator shows unto your honors that the said Ziegler and the other persons above named have served upon the said American Trust & Savings bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, a notice in writing demanding that said trustee and said cotrustee take possession of the railroad of your orator and the appurtenances and equipments thereunto belonging and appertaining.

And your orator shows unto your honors that the said American Trust & Savings bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, your orator is informed and believes, have no knowledge of the facts hereinbefore set forth and made, and your orator believes that they will, unless restrained by order and injunction of this honorable court, as herein prayed, at the request of the said Ziegler and the other persons hereinbefore named, take possession of the road of your orator and the appurtenances and the equipments thereunto belonging and appertaining thereto, or will, at the request of said persons, proceed by a suit in equity to foreclose said mortgage or trust deed; and your orator shows unto your honors that if such action is taken by said trustee and cotrustee it will greatly injure and impair the credit of your orator and impair the value of its property and assets and interrupt the
515 present regular running of its trains and greatly depreciate the value of the bonds of the company now outstanding and held by other persons *bona fide* and in good faith.

And your orator further shows unto your honors that no other persons other than those conspiring with said Ziegler, as aforesaid, have made any demands upon said trustee or cotrustee to take any action whatever, but, on the contrary, that persons owning more than 6,000 bonds of your orator do not desire said trustee or cotrustee to take possession of said railroad or to foreclose said mortgage, and

have notified said trustee and cotrustee to take no action whatever against your orator.

And your orator further shows unto your honors that your orator fears and verily believes that if the said Ziegler and the other persons above named are notified of the filing of this your orator's bill of complaint they will immediately sell, assign, transfer, or otherwise put out of their possession or control the said bonds so held by them, as aforesaid, to *bona fide* holders thereof for value.

And your orator further shows unto your honors that said William Ziegler is a resident and citizen of the State of New York, and that, so far as your orator is able to ascertain, the said Ziegler has no property or effects within the State of Illinois which can be reached by process of law, and that so far as your orator has been able to ascertain and your orator verily believes that the
516 other persons above named to whom the said Ziegler has transferred bonds, as above set forth, are not residents of the State of Illinois and have no property or assets within the State of Illinois which can be reached by process of law.

Forasmuch, therefore, as your orator is remediless in the premises, except in a court of equity, where matters of this kind are properly cognizable and relievable, your orator files this its bill of complaint, and makes William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust & Savings Bank, trustee, and The Farmers' Loan & Trust Company, cotrustees, parties defendants to this its bill of complaint, and prays:

First. That the said defendants may be required to appear and answer this your orator's bill of complaint, but not under oath, the answer under oath being hereby expressly waived.

Second. That an accounting may be had between the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, and
517 your orator, and that upon the payment to the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright of the amount which the said William Ziegler actually paid for said bonds and stock obtained by the said Ziegler from the said Underwood and Green, as hereinbefore set forth, the said Ziegler and the said George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence G. Ellis, and Lizzie Wentworth Wright may be decreed to return to and surrender up to your orator all the bonds and stock and other property, if any, obtained by the said William Ziegler from the said Underwood & Green, as hereinbefore set forth, your

orator hereby offering to pay what, if anything, the said William Ziegler paid for the said bonds and stocks so obtained by him, as aforesaid, from the said Underwood & Green, and your orator also hereby offering to pay to the said William Ziegler and the said George Cleveland, Effingham H. Nichols, William M. Van Anden,
Charles Smith, James B. Ryan, William R. Peters, Jere
518 Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright what, if anything, shall appear to be due to them or either of them upon said accounting.

Third. That in the meantime the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright and each of them and their respective attorneys, solicitors, agents, and servants be restrained and enjoined from selling, assigning, transferring, or otherwise putting out of their possession or control any of the bonds or stocks of the Lake Street Elevated Railroad Company now owned by them or either of them or in their possession or under their control and obtained from Underwood and Green by said Ziegler.

Fourth. That the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright may be enjoined and restrained from commencing any suit, either at law or in equity, upon said bonds or the coupons thereto attached, and from collecting or attempting to collect any interest upon said bonds or coupons or any part or portion thereof.

Fifth. That said American Trust & Savings Bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, and each of
519 them, their respective attorneys, solicitors, agents, and servants, may be restrained and enjoined from taking possession of the railroad of your orator or the appurtenances thereof or any part or portion thereof upon or by reason of or at the request of the said Ziegler and the said George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright, or either of them, or any person or persons acting for or on their behalf, and from commencing any suit to foreclose said trust deed upon or by reason of or at the request of the said Ziegler or the said George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright, or either of them, or of any person or persons acting for and on their behalf.

Sixth. That your orator may have such other and further and

different relief in the premises as equity may require and to your honors may seem meet.

May it please your honors to grant unto your orator a writ of summons in chancery directed to the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, and the American Trust & Savings Bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, commanding them and each of them to appear before this honorable court on the first day of the next term thereof to be held at the court-house, in Chicago, in the county of Cook aforesaid, then and there to answer this bill, etc.

And may it please your honors to grant unto your orator the people's writ of injunction immediately and without notice, to be directed to the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, the American Trust & Savings Bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, their respective attorneys, solicitors, agents, and servants, restraining them and each of them as hereinbefore prayed.

And your orator will ever pray, etc.

THE LAKE STREET ELEVATED RAILROAD COMPANY,

By D. H. LAUDERBACK, *President.*

EGBERT JAMIESON, *Solicitor for Complainant.*"

STATE OF ILLINOIS, } *County of Cook,* } *ss.*:

In the Circuit Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant, }
vs.
WILLIAM ZIEGLER ET AL., Defendants. }

STATE OF ILLINOIS, } *County of Cook,* } *ss.*:

D. H. Lauderback, being first duly sworn, deposes and says that he is the president of the above-named complainant in the above-entitled cause, The Lake Street Elevated Railroad Company. Affiant further says that he has read the attached and foregoing bill of complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to such matters as are therein stated to be upon information and belief, and as to those matters he believes it to be true. Affiant further says that by reason of the matters and things set forth in said bill of complaint he believes, and so states the facts to be, that the rights of the complainant will be unduly prejudiced if the injunction prayed in said bill of com-

plaint is not issued immediately and without notice to the defendants; and affiant further says that he is advised and informed,
522 and so states the facts to be, that the rights of the complainant in this cause will be unduly prejudiced if the injunction in this cause is not issued immediately and without notice to the defendants.

D. H. LAUDERBACK.

Subscribed and sworn to before me this 30th day of December, A. D. 1895.

[SEAL.] FRED J. SQUIBB,
Notary Public.

I have examined the above and foregoing bill of complaint and recommend that the injunction issue as prayed in said bill of complaint immediately and without notice upon the complainant giving a bond in the usual form in the sum of $25,000, with surety, to be approved by the clerk of this court.

GEORGE BASS,
Master in Chancery of the Circuit Court of Cook County.

In Chancery.

Let writ of injunction issue as recommended by Master in Chancery Bass.

JOHN GIBBONS, *Judge.*

Master's fees, $5, paid by complainant's solicitor.

(Endorsed:) Filed Jan. 24, 1896. S. W. Burnham, clerk.

523 EXHIBIT "A."

(*Construction Agreement.*)

"Agreement made this fourth day of February, A. D. 1893, between Frank L. Underwood and Willard R. Green, of New York city, parties of the first part, and hereinafter designated as 'contractors,' and the Lake Street Elevated Railroad Company, a corporation created and existing under the laws of the State of Illinois, hereinafter designated as 'railroad company,' party of the second part, witnesseth, as follows:

Article I.

The contractors, in consideration of the railroad company's promises and agreements hereinafter contained, hereby promise and agree to and with the railroad company:

First. That upon the terms and conditions hereinafter set forth, the contractors will furnish the labor and material for, and construct, build and complete the railroad of the railroad company, and furnish forty-eight single passenger stations upon the line of said railroad, including terminal stations, and will also build the shops, sheds and engine-houses described in and in accordance with the original specifications hereto attached, marked Exhibits A, B,

C, D, E, F, G, H, and I, J, and K, and made a part of this agreement, and also in accordance with more particular plans and specifications to be from time to time furnished by the railroad
524 company. The said railroad company reserves to itself the right to change, alter or modify said plans and specifications on the approval of the president of the railroad company. The railroad and structure and stations herein specified, are understood to cover the lines of railroad specified and described in certain ordinances passed by the city council of Chicago, on November 24th, 1890, and December 19th, 1892, and which said ordinances of November 24th, 1890, have been duly assigned to, and are now owned by the said railroad company. Said contractors to provide at their own expense all the labor, material and property required therefor, except so much of the same as is now partially completed, and excepting the necessary land for right of way and for stations. The said railroad company agreeing upon its part to pay for or obtain all land that may be necessary for the construction of the said railroad and its passenger stations, and for other purposes. The material to be of such quality and the work to be so done on the said railroad and its passenger stations that when finished it shall constitute a first-class elevated railroad, completely furnished and equipped and with all requisite structures, and ready for operation and to carry passengers.

Second. In addition to the structure and the passenger stations and railroad above specified, said contractors shall also build
525 and furnish all the material and labor necessary, at their own expense, to build a yard room for the storage of cars, in accordance with the plans and specifications to be furnished and made a part of this contract, to cost not exceeding seventy thousand dollars ($70,000). The company reserving the right to make the plans and specifications for said yard, the difference in cost as above, to be paid by or saved to the railroad company.

Third. That said contractors will procure for and furnish to the railroad company, except as hereinafter provided, for the equipment of said railroad (without any liability against the railroad company therefor) twenty-five (25) locomotive engines, and one hundred and twenty-five (125) passenger cars specified and described in the specifications hereto attached, which said engines and cars shall be in every respect in accordance with the plans and specifications therefor, to be furnished by the railroad company and approved by its president. Said railroad company shall obtain all necessary permits to permit said contractors to enter upon the street for the purpose of proceeding with the work of construction.

Fourth. The said contractors shall, within a reasonable time, begin the work of constructing said railroad and stations, and shall faithfully prosecute the same to completion, using all reason-
526 able diligence therein, and the said railroad with its passenger stations and appurtenant structures, in accordance with said plans and specifications, shall be constructed and ready for operation, and the equipment therefor shall be furnished, not later than

the 23rd day of November, A. D. 1893. Provided, however, that the contractors shall not be held liable for delays occasioned by the failure of the railroad company to perform any of its obligations hereunder, nor for delays occasioned by strikes or other labor troubles, nor for the acts of God or the public enemy.

And further provided that should said railroad company at any time before the construction of that portion of the structure east of Market street is entered upon, make any other arrangements for the use of a terminal or terminal facilities east of said Market street for said railroad company, whereby it shall become unnecessary for said railroad company to build, and said railroad company shall decide that it will not build or cause to be built the single-track loop hereinbefore referred to, then and in that case said contractors shall be under no obligation to build and shall not be required to build said loop, but in lieu and instead thereof shall build and construct at their own expense such track and structure extending westward from the present western terminal of said company, at West 52nd street, of similar structures as hereinbefore provided for, from Rockwell street to West 52nd street, as will be equiv-
527 alent to the number of feet of structure of said loop line, or in lieu thereof, an equivalent amount of structure and railroad at such other place as directors of said railroad company designate, and as a part of or extension of the line of said railroad that the expense thereof will equal the present estimated cost of said loop line.

Fifth. It is further agreed that should the material or workmanship or the structure of the railroad as herein provided for, fail in any respect to conform to the requirements of said specifications, then and in that case the said railroad company through its president, may order such improper work or material to be removed within a reasonable time, and if not so removed, then said railroad company shall have the right to remove the same at the expense of said contractors, who shall immediately replace the same in accordance with the specifications.

Sixth. If said railroad company should, before said contractors enter upon the work or let any contract for the construction of any station, as provided in this contract, purchase or acquire a building or buildings to be used for the purchase of a station, and give to said contractors a reasonable notice of its intention to so use said building or buildings, then said contractors shall not build a station at said point or place, but shall build so much of said station
528 as may be necessary to utilize said building or buildings for the purposes of a station, and in such case an allowance shall be made to said railroad company of the fair value of said work so omitted by said contractors.

Article II.

In consideration of the foregoing premises and of the contractors' promises and agreements herein expressed, the said railroad com-

pany hereby promises and agrees to and with the contractors as follows:

First. That at the times hereinafter specified it will pay, or cause to be paid, to the contractors, as consideration for building, furnishing and equipping its railroas as aforesaid, the sum of eleven million six hundred and fifty thousand dollars ($11,650,000), and cash provided in clause "C" of this article.

(*a.*) Six million five hundred thousand dollars ($6,500,000) thereof in the fully paid capital stock of the company at par, or such an amount of said capital stock as will, with the stock of said railroad company, issued or outstanding, make the total capital stock of said company ten million dollars ($10,000,000.)

(*b.*) Five million one hundred and fifty thousand dollars ($5,150,000) of said eleven million six hundred and fifty
529 thousand dollars ($11,650,000) to be paid in the first-mortgage 5% gold bonds of the railroad company at par. The said bonds being part of a proposed issue of six million five hundred thousand dollars ($6,500,000) par value of bonds, each of which is to be for one thousand dollars ($1,000) payable in gold coin of the present standard of weight and fineness, on the first day of July, A. D. 1930, with interest at the rate of 5% per annum, payable in like gold coin semi-annually, on the first days of January and July of each year, and all of which said bonds are to be equally secured to be paid by mortgage or deed of trust, which shall be a first lien upon all the property rights, ordinances and franchises of the railroad company, whether now held or hereafter acquired by it, and which shall contain such provisions for the protection and security of the holders of said bonds as the attorneys of the contractors and of the railroad company shall deem advisable; said bonds to be delivered April 8, 1893, and to draw interest from January 1st, 1893; which mortgage shall contain provisions for the issue of such further bonds, to be secured thereby, as may be required by said railroad company, for the uses and purposes hereinafter provided, provided said railroad company may provide in said mortgage or deed of trust for the redemption of said bonds before the maturity thereof.

(*c.*) Also in addition to said bonds and stock, shall receive sixty thousand dollars ($60,000) in cash, received by said company
530 under a certain contract for the sale of stock with A. W. Wheeler, which said sixty thousand dollars ($60,000) shall be considered as a part of the funds provided to be paid hereinafter for the expense of said company during the time of construction, but any part thereof may be used by said contractors to pay any bills for construction or expense of said railroad company.

It is further agreed that of said proposed issue of six million five hundred thousand dollars ($6,500,000) of bonds not to exceed one million dollars ($1,000,000) thereof shall be used by the railroad company in paying and canceling its present bonded indebtedness, and for no other purposes, upon surrender to it of eight hundred and twelve (812) six (6%) per cent. bonds, issued by the Lake Street Elevated Railway Company and referred to in the McDonald contract, and any other existing liens upon its property, ordinances

or franchises (excepting such bonds as have been issued since July 22nd, 1892) which said last-named bonds shall be taken up or surrendered to the company for cancellation by the contractors, and three hundred and fifty thousand dollars ($350,000) of said bonds are to be used for the further purpose of the railroad company in the discretion of its board of directors.

And further provided that any additional issue of bonds under said above-mentioned mortgage may be used to provide funds for the following purposes, viz:

531 (*a.*) In adding to, extending and building additional railroad or branches of said railroad, or, acquiring other railroads by construction or otherwise, at not exceeding eight hundred and fifty thousand dollars ($850,000) of bonds per mile for two-track road, fully equipped with rolling stock, stations, switches, signal stations and necessary appurtenances.

(*b.*) Procuring equipments or rolling stock in addition to that which the said Underwood & Green agree to furnish for the lines of road described in ordinances passed by the city council of Chicago on November 24, 1890.

(*c.*) Paying, adjusting or settling claims or suits for damages arising out of the building or operation of said railroad, or such extensions and branches.

(*d.*) Procuring right of way and such other real estate as may be needed by the railroad company in extending, adding to, and building branches of said road.

(*e.*) Paying any interest that may accrue and remain unpaid during the first two years of the operation of the railroad after delivery and acceptance of said road from contractors for the same, after applying to the payment of such interest the net earnings of the railroad during said two years.

(*f.*) In case of the company eventually crossing the Chicago river, or either of its branches, on its own bridge, not exceeding
532 five hundred thousand dollars ($500,000) of said bonds for each such bridge and its approaches.

Second. The consideration which is payable in bonds and stock for building, furnishing and equipping said railroad, in accordance herewith, shall be paid as follows, viz:

First. Said railroad company shall cause its capital stock to be increased to ten million dollars ($10,000,000) and shall cause the mortgage or deed of trust hereinbefore provided for, to be duly authorized, executed, delivered and recorded (the trustee thereof to be mutually agreed upon), and all its prior indebtedness paid, satisfied or provided for, and all liens or incumbrances upon its property or franchises, or any part of either canceled and discharged or provided —, except as hereinbefore specified, and said six million five hundred thousand dollars ($6,500,000) of capital stock, and five million, one hundred and fifty thousand dollars ($5,150,000) of bonds which are to be paid the contractors as hereinafter provided, shall be forthwith or as soon as said bonds and said certificates of stock can be authorized, prepared and executed, delivered to the American Trust & Savings Bank of Chicago, Illinois, who are hereby made finan-

cial agents of the parties hereto, for this purpose charged with the duty, and fully authorized and empowered to deliver said bonds and shares of stock, or receipts therefor, to the said contractors or
533 their orders, as and when they shall be entitled to receive the same under the terms of this agreement.

Second. The chief engineer and president of the railroad company shall on or before the tenth day of each month make an estimate of the value of the work, materials, and equipment done and furnished, or contracted for by the contractors, under contracts approved by the chief engineer and president pursuant thereto, for and during the next preceding calendar month; and said chief engineer and president shall certify to such estimate in writing, and thereupon there shall be paid to the contractors, or their order, by an order drawn by the president upon the financial agents hereinbefore agreed upon, and the financial agents shall pay said contractors or their order, upon said order of the president, such an amount of said bonds as, taken at ninety (90%) per cent. of the par value thereof will equal the value of said work, materials and equipment, as the same shall appear from said order of the president, and said financial agents shall also deliver to said contractors or their order, in addition to said bonds, an amount of the shares of said company so deposited with them, equal to the face value of the bonds payable upon said order. And upon the final completion of the work hereunder, all bonds, shares and money that may remain in the hands of said financial agents not taken up by such orders of the president, shall belong to and be turned over to said contractors.

534 In the event that the loop in the alleys east of Market street be not built, and that the directors have not at the time of the completion as herein provided (of the remainder of the road herein agreed to be built) decided upon the road to be built in lieu of said loop, or that said additional road, if decided upon be not at such time completed, then and in that case there shall be reserved and held by the American Trust & Savings bank such an amount of the bonds and stock (or cash if such bonds and stock be then sold), herein agreed to be paid to complete such new piece of road, as the chief engineer and president of said railroad company, shall certify as sufficient to complete said road, including stations, in accordance with the plans and specifications therefor, with a margin of ten (10 %) per cent. on such estimated cost, as security for the completion of such road, and the remaining bonds and stock, or cash, shall be delivered to the contractors as above provided. But this shall not be held to waive the right of the contractors to build the additional structures in case said loop is abandoned.

Provided, however, that said chief engineer and president shall from time to time, at the request of said contractors, make an estimate showing the proportions which the value of the work and materials previously thereto done or furnished, as certified, bears to the whole amount or value of such work or material to be done or furnished under the specifications and estimates; and said
535 chief engineer shall certify thereto in writing.

And thereupon the president, in his discretion, may issue to said contractors an order upon said financial agent for such amount of bonds and shares as provided, as will with the payments already made, on account of said work or material, equal ninety (90 %) per cent. of the proportion of said work or material so done or furnished, as appears by the estimate and certificate of said chief engineer.

Third. The said railroad company further agrees that the said contractors may at any time before they shall have earned them under this agreement, or from time to time, sell the whole or any part of said five million one hundred and fifty thousand (5,150,000) of bonds at such price, not less than ninety (90%) per cent. of par, as they may determine, and in case of such sale or sales the bonds sold shall be delivered by said financial agents to the contractors, or their order, in exchange for the purchase price thereof in money at said ninety (90%) per cent., which money shall be paid out by said financial agents in lieu of the bonds themselves in monthly instalments as hereinbefore provided: And said financial agents shall also deliver to said contractors, or to their order, upon said payment, shares of said company so on deposit, equal in amount to one hundred and twenty-five (125 %) — of the face value of the bonds so sold.

536 Should said contractors prior to the execution and delivery of the five (5 %) per cent. bonds herein provided to be paid, deposit in the American Trust & Savings bank money equal in amount to the ninety (90 %) per cent. of the par value of any part of the bonds to be delivered to them hereunder, then and in that case the railroad company agree to deliver to said American Trust & Savings bank such an amount of the present issue of the six (6 %) per cent. first-mortgage bonds of the Lake Street Elevated Railway Company, as will be equal to the amount of said five (5 %) per cent. bonds to which said contractors will be entitled upon making said deposit. Said six (6 %) per cent. bonds to be held by said American Trust & Savings bank as security for the delivery of the amount of five (5 %) per cent. bonds herein agreed to be paid, to which said contractors would be entitled on account of said deposit, and said American Trust & Savings bank may issue its certificates to said contractors, or their order, reciting that it holds said six (6 %) per cent. bonds as security for the delivery of the five (5 %) per cent. bonds herein agreed to be paid, and represented by said certificate, and said American Trust & Savings bank may continue to issue such certificates until the six (6 %) per cent. bonds now held by the railroad company shall have been exhausted, or the new five (5 %) per cent. bonds to be issued shall have been delivered as agreed.

537 Said contractors shall have the right upon depositing with the American Trust & Savings bank, one million five hundred thousand dollars ($1,500,000) (on account of subscription to underwriting at ninety (90 %) per cent. of the par value of said five (5 %) per cent. bonds) on account of such subscription to the amount of not less than four million dollars, — be entitled to draw thirty-two thousand, five hundred (32,500) shares of the capital

stock of the railroad, deposited with said American Trust & Savings bank under this agreement, the remainder of said shares shall be held by said American Trust & Savings bank to secure the payment of the instalments remaining unpaid under said underwriting, and upon the payment of any portion of said instalments shall deliver to said contractors, or their order, an amount of said shares at par, equal to the face value of the bonds delivered upon the payment of said instalments, until said shares shall have been exhausted, unless previously paid to said contractors in whole or in part, under the terms of this agreement hereinbefore mentioned. After the withdrawal of stock under the deposit of one million five hundred thousand (1,500,000), then only an equal amount of stock shall be drawn with any bonds as above provided.

Fourth. The said railroad company further agrees upon its part, that while this agreement is in force it will issue no stock or bonds in addition to the stock and bonds which have been already issued, or which the railroad is now legally bound to issue, except
538 under and in accordance with the terms of this agreement. Said contractors shall cause to be paid from time to time, as required, all expenses and taxes, including salaries in carrying on and conducting the necessary business of said railroad company in connection with the line of road herein agreed to be built and equipped until November 23rd, 1893, and until said road shall be accepted by the railroad company hereunder, and for which no claim shall be made against said railroad company; and further, provided, that in case said contractors fail to so provide, then said company shall and are hereby authorized to withdraw from the financial agents and sell such bonds from time to time, as may be necessary for such purpose, at not less than ninety (90 %) per cent., or said financial agents shall pay out of any money in its hands under this agreement, upon the order of the president of the railroad company, such moneys as may be necessary from time to time, to pay said matters above provided to be paid by said contractors, subject to the approval of the board of directors of the railroad company and the contractors.

Fifth. It is further agreed that said railroad company shall promptly prepare and furnish all necessary plans and specifications for the work, materials and equipments to be done or furnished hereunder, and obtained by purchase or condemnation, all right of way, depot grounds and other real estate needed for the construction of said railroad, within such time as may be required
539 for the purpose of proceeding expeditiously with the work of construction hereunder.

Article III.

It is further agreed between the parties hereto, in consideration of the promises and agreements hereinbefore mentioned, as follows:

First. The title to and property in every part of the railroad, buildings, structures, lands and real estate, materials, machinery,

and equipment, which may from time to time be furnished and paid for by the contractors, to be used in or about the construction and equipment of said railroad, shall vest absolutely in the railroad company whenever, and not until the same shall have been paid for by said railroad company, in accordance with the terms of this agreement, free from all liens and charges, except the lien of the mortgage aforesaid, and the same shall not, nor shall any of them thereafter in any way be liable for, or subject to, or affected by the debts, contracts, engagements or other acts of the contractors to the prejudice of the railroad company; provided, said contractors shall have the free use of any machinery, tools or fixtures now used or belonging to the said railroad company. Nevertheless, the said railroad buildings, structures, equipment, materials, tools, implements and machinery shall be in the charge and at the risk of
540 the contractors, until the same shall have been delivered and accepted by the railroad company, when and thereafter the same shall be at its risk.

Second. The contractors, except as they may otherwise elect, shall have the use of the railroad hereby agreed to be constructed, with its appurtenances and equipment, and the tolls, rents, issues and income thereof, until this agreement shall have been duly performed as herein promised, provided that there shall be no unnecessary delay in the final completion of said railroad, and when this agreement shall have been duly performed, then the said railroad, with all its appurtenances and equipment shall be turned over to the railroad company in good order and first-class condition: Provided that said railroad company shall have the right to accept such portion of said railroad and structure as may at any time be completed and ready for delivery, and as said railroad company may elect: Provided, that at the time of such election, said railroad company shall have fully complied with the terms of this agreement upon its part, as to so much of said road and structure as it shall so elect to accept. But, said contractors shall have the right to use such portion of said railroad and structure so accepted as may be necessary to carry on the work of construction and complete the work as to such remaining portions of said railroad upon their part, and said company shall not have as to the remaining
541 portion of said road not so accepted, the right to run or operate any rolling stock thereon for the purpose of carrying passengers or receiving tolls therefrom. Such acceptance not to affect the rights of the parties hereto as to the remaining portion of the contract not performed, nor as an acceptance of the completion of this contract as a whole.

Third. The contractors shall pay, or cause to be paid all interest that may become due and payable upon bonds of the railroad company to be issued as aforesaid, which may become due and payable during the time that they shall be engaged in such construction, or during which it shall be operating said railroad, provided, that said contractors shall have no claim against said railroad company for the interest paid by them as aforesaid. But should any portion of said railroad be completed and turned over to and accepted by the

railroad company, including the rolling stock, depots and appurtenances, before the final completion of the whole thereof, as in this agreement provided, then and in that event the railroad company shall pay the interest becoming due after said acceptance, on such a proportionate amount of said bonds as the work accepted and paid for, as herein provided, bears to the whole cost of the work herein agreed to be performed by said contractors. And further provided, that in case the work under this agreement shall be suspended by reason of the fault of the railroad company, or for any reason
542 arising under the acts and doings of the railroad company, or for failure of the railroad company to perform its obligations hereunder, then the said railroad company shall, during the time of such suspension, pay, or be held to refund to the contractors at the completion of this contract, all interest which may have accrued during the period of such suspension, upon all bonds outstanding, at and during the time of suspension.

Fourth. In case the said contractors shall fail to pay the interest aforesaid, in accordance with their agreement herein, and such default shall continue for thirty days, then the railroad company may enter upon and take possession of all parts of said railroad, rolling stock and appurtenances which shall then be completed, and hold and operate the same until the interest so in default shall have been paid by the contractors, or in case such interest shall have been already paid by the railroad company until said contractors shall have reimbursed the said railroad company therefor, or until a settlement shall be made by the parties hereto, in accordance with the terms of this agreement.

Fifth. It is further agreed that this agreement shall not be assigned in whole or in part by the said contractors without the consent in writing of the railroad company, and provided, said contractors may, if they so elect, organize a corporation under the laws of the State of Illinois, for the purpose of receiving this contract and per-
543 form the work hereunder, to which said company said contractors shall have the right to assign this contract, and all rights thereunder, and thereupon a new contract identical in terms, provisions, conditions and restrictions with this contract, shall be made and executed between the said railroad company and said — company, in lieu and instead hereof, and thereupon this contract shall be surrendered and canceled: Provided, in case of such assignment then the assignee shall give a bond in the penal sum of one hundred thousand dollars ($100,000) for the faithful performance of this contract.

Sixth. The monthly estimates and certificates hereinbefore provided for, shall not be taken as an acceptance of the work by the railroad company, or a release of the contractors from any liability in respect thereto, but at the conclusion of the work, except as hereinbefore provided, the railroad with all its equipments and appurtenances, shall be delivered over complete and in good order, according to the true intent and meaning of this contract.

Seventh. In case the said contractors shall not begin or shall in any respect fail to complete said railroad within the time stipulated

herein, and their failure so to do in either case shall be due in whole or in part to any other cause than their own fault, then the time in which they may begin or complete said performance, as the case may be, shall be correspondingly extended: Provided, in
544 case the said contractors fail to begin work in ninety (90) days, or a suspension of work for any cause of their own fault and not excepted in this contract, shall occur for a period of sixty (60) days, all parts of the bonds and stock in the hands of financial agents shall be returned to the railroad company upon demand therefor, and this contract forfeited, and all rights of said contractors hereunder.

Eighth. John A. Roche, president of the railroad company, shall determine as to any matter arising under the contract in the first instance, except as herein otherwise specially provided, and in case the contractors shall not be satisfied with the decision of said John A. Roche, then in that case the matter so in dispute shall be submitted to John A. Roche, Gilbert B. Shaw and F. L. Underwood, or Willard R. Green in the place of said Underwood, and the decision of cother two of said three shall be final and conclusive as to said matter.

Ninth. This agreement shall bind and enure to the benefit of the heirs, executors, administrators and assigns, so far as such assignment is provided for of the party of the first part, and shall enure to, and shall bind the successor or successors of the party of the second part hereto.

It is understood and agreed that this contract is limited to building and equipping the line of road, as provided by ordinances
545 of November 24, 1890, herein referred to and when so built and equipped, this contract shall be at an end so far as authorizing the building or equipping of any additional amount of road, except as provided an equivalent structure in case its loop is not built.

It is further understood and agreed, and is hereby made a special condition, provision and requirement of this contract, that the said parties of the first part are to take the bonds and stock hereinbefore referred to and obtain underwriting agreements in good faith, and by responsible parties for said bonds and said stock, within a reasonable time and not to exceed thirty (30) days to the amount of at least four million dollars ($4,000,000) of said bonds at ninety (90) cents on the dollar: Provided, the board of directors of said railroad company shall have the right to extend said period of underwriting to such time as they may deem reasonable and just and if said underwriting is not obtained within the time first made, or within such extension of time, then this contract shall become null and void and all securities and property received by said parties of the first part hereunder, shall be returned to the said party of the second part, and to in whosever hands the same may be upon the order of the president of this company.

In witness whereof, the said The Lake Street Elevated Railroad Company has caused these presents to be signed by its presi-

546 dent, and attested by its secretary, and caused its corporate seal to be hereto attached, and the said parties of the first part have signed and sealed this agreement the day and year first above written.

LAKE STREET ELEVATED RAILROAD COMPANY,

By —— ——, *President.*

Attest: —— ——, *Secretary.*

—— ——. [SEAL.]
—— ——. [SEAL.]

547 *Specifications for Lake Street Elevated Railroad.*

EXHIBIT A.

The extension of the present structure is to be continued to Fall street. This structure has a transverse girder of 48 feet, and is arranged for two tracks, with further provision for the necessary turnouts, in case required in future.

EXHIBIT B.

The structure from Fall street to Fifty-second street or Robinson avenue is to be similar in design to the structure east of Fall street, except that transverse girders will be 32 feet. This is also to be two-track structure, with provision as stated in connection with the structure east of Fall street.

EXHIBIT C.

All foundations west of Rockwell street are to be made to conform to the specifications furnished herewith and marked Exhibit C, it being understood that certain foundations heretofore prepared on this section are not suitable and must be abandoned or made to conform to Exhibit C.

EXHIBIT D.

That portion of the structure east of Lake Street bridge is to be made in accordance with plans and specifications not yet
548 prepared, and that cannot be prepared until said route is determined, but the structure shall be equal to the requirements of the route, but not to exceed in cost a single-track structure of 7,500 feet.

EXHIBIT E.

That portion of the structure known as the Lake Street bridge structure is to be in accordance with the present plans and specifications therefor and the existing contract, which is assumed by the contractors, and is to become a part of their contract.

EXHIBIT F.

The tracks, ties, and all other material in connection with the structure shall conform to the plans and specifications of the present structure, with such modifications as may be necessary in the opinion of the engineer, provided, however, that no such modifications shall increase the cost or expense of any of the same.

EXHIBIT G.

Plans and specifications are to be made for shops, sheds, and machinery, and the price for all of such shops, sheds, and machinery shall not exceed the sum of $70,000.00.

Storage yards and tracks shall be constructed in accordance with specifications herein provided and having a storage capacity of 1,500 feet of track, more or less, the same not to exceed in cost the sum of $70,000.00.

549 EXHIBIT H.

It is the intention, as far as practicable, to make stations similar in design to the stations built by the Manhattan Elevated Railroad Company in New York at 18th and 28th streets, with suitable foundations, platforms, and proper supports for the same, together with drip-pans and all necessary appliances, where stations are erected in a street or at street corners or otherwise.

EXHIBIT L.

Locomotives, cars, and heating and lighting arrangements shall be substantially in accordance with the present specifications now prepared, but may be modified, provided the expense of the same shall not be increased by any such modifications.

EXHIBIT J.

The railroad company reserves the right wherever it may be necessary to prepare plans and specifications substantially in accordance with the above that shall be approved by the president, provided, however, that no extraordinary expenses shall be added thereto that are not contemplated by or in the original specifications or estimates that have been prepared previous to this date. This is not to be construed as curtailing the specifications or contract, which calls for a complete railroad fully equipped.

550 EXHIBIT K.

The entire structure, depots, and appurtenances shall be made to conform to the requirements of the ordinances of the city of Chicago passed November 24th, 1890, authorizing the construction of said railroad.

All blue prints and details of plans and specifications, together with estimates made by engineers employed by the railroad company and the description of what constitutes an elevated railway, so far as the same may be hereafter provided and approved by the

president of the railroad company, shall be considered as a part of this contract.

This agreement, made this 31st day of March, A. D. 1893, by and between the Lake Street Elevated Railroad Company, party of the first part, and Messrs. F. L. Underwood and W. R. Green, of New York, parties of the second part, witnesseth:

That whereas, the parties of the second part did by a certain contract dated February 4th, 1893, agree to build, complete and equip the railroad of the party of the first part, as in said contract specified; and

Whereas, the party of the first part has been requested by the parties of the second part to guarantee the payment by said
551 parties of the second part for material and equipment, and may be so requested from time to time in the future to guarantee other payments by said parties of the second part.

Now, therefore, this agreement is made as a modification of said contract of February 4th, 1893, viz:

That upon all contracts which said party of the first part may so guarantee the performance of by said Underwood & Green that said party of the first part, through its president, shall be authorized to draw from time to time upon vouchers issued by the president of the railroad company, from the hands of the American Trust & Savings bank such amount or sum as may be necessary from time to time to make the payments upon the contracts so guaranteed by said party of the first part and the order or voucher of the president of the railroad company upon said American Trust and Savings bank against the funds in the hands of said bank received by it under a certain underwriting agreement, for the purchase of the bonds of said railroad company, shall be sufficient voucher and order for the withdrawal of said funds the same as though made by said parties of the second part or their assignee, and that said president of said railroad company shall be authorized and is hereby authorized to draw such orders from time to time upon such funds in the hands of said bank, or in the hands of its agents in the city of New York as may be necessary to
552 meet any of said payments or obligations, which said party of the first part may be under to perform for the purpose of carrying out the contract between said parties of the second part and said party of the first part, and that the order or voucher drawn by the president of the railroad company upon such funds shall be sufficient warrant and authority for said American Trust & Savings bank to pay money out of such funds, said Underwood & Green hereby ratifying and confirming all that said president of the railroad company may do in pursuance hereof, with as full power and authority as though the same had been done by said parties of the second part or their assigns.

Provided, it is understood and agreed that said railroad company may draw from said funds all moneys that may be necessary from time to time to meet any obligation which said Underwood & Green may be under to said railroad company or to other parties,

or which they may authorize to be drawn from said funds so in the hands of the American Trust & Savings bank, or in the hands of the Farmers' Loan & Trust Company *pro rate*.

In witness whereof the parties hereto have signed this agreement the day and year first above written.

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By JOHN A. ROCHE, *President.*

Attest:
[SEAL.] OTIS W. BRUNER, *Secretary.*

F. L. UNDERWOOD.
WILLARD R. GREEN."

553 NEW YORK, *4th May*, 1893.

John A. Roche, president Lake Street Elevated Railroad Company, Chicago, Illinois.

DEAR SIR: We hereby authorize the Lake Street Elevated Railroad Company of Chicago, Illinois, to make a supplementary contract with us which may modify any or all contracts entered into between the said Lake Street Elevated Railroad Co. and ourselves, so that the said railroad company shall have full power to act in our stead and for us and be fully protected in every respect, and provided the issue of its securities shall not be invalidated by such modifications, with the distinct understanding that any profit or loss that may be found to exist on the construction, equipment, and completion of the said Lake Street elevated railroad under said original or modified contracts shall accrue to us, and with the further understanding that there shall be no modification as to the plans and specifications, except as provided for in said contracts, or in the sum total to be paid under said contracts. We agree to give our time and personal attention, so far as necessary, to the carrying on of the work to completion under said contracts. We affirm that we have not assigned and will not assign said contracts without the written consent of the said Lake Street Elevated Railroad Company.

F. L. UNDERWOOD.
WILLARD R. GREEN.

554 (It is stipulated that Exhibit B, referred to in said last-mentioned bill of complaint and attached thereto, is the same trust deed, a copy of which is attached to the bill of complaint herein and admitted by the answers herein.)

EXHIBIT "C."

"We, the undersigned subscribers hereto, holders of the number of shares in the Lake Street Elevated Railroad Company set opposite our signatures respectively, do hereby elect and agree to avail ourselves of the option and privilege given us as such shareholders o subscribe for and take an amount of the bonds and shares of

said company equal to our present respective shareholdings therein, as of record February 11th last.

And we do hereby each for himself respectively, and not for the others or either of them, subscribe for the number of bonds and shares set opposite our respective signatures, and agree to take and pay to the American Trust and Savings Bank of Chicago, Illinois, the purchase price for the same, in accordance with the terms and conditions hereinafter set forth.

And, in consideration of the sale to us respectively of said bonds and shares, we do hereby each of us waive our rights as shareholders to receive said shares at par, hereby assenting to the mak-
555 ing of a mortgage by said company to secure $6,500,000.00 of bonds to be issued by said company, in accordance with such provisions as the board of directors may determine, and consenting to increase the capital stock of said company to $10,000,000.00.

The purchase price of said bonds and shares shall be 90 per cent. of the face value of the bonds subscribed for, together with a bonus of an equal amount of shares of said increased capital stock at par, payable in five instalments of 20 per cent. each, not nearer than sixty days apart, as and when called for by said American Trust and Savings bank. Interest on said bonds shall be adjusted at the rate of five per cent. (5%) per annum.

Upon payment of each of said instalments, the person making the same shall be entitled to receive a proportionate amount of the bonds so subscribed and paid for in case the same shall be then engraved and ready for delivery, and, if not, he shall receive the negotiable receipt of said American Trust and Savings bank evidencing the right of the holder thereof to said bonds.

A proportionate amount of the shares hereby subscribed for as bonus shall be delivered upon the payment of each of said instalments respectively except the first; the shares apportioned to said first instalment shall be set aside by said American Trust and Savings bank and held as security for the payment of each of the next succeeding instalments as they mature respectively, and
556 in case any of said instalments be not paid as provided shall be forfeited. Upon payment of all the instalments herein provided for all bonds and shares so paid for shall be delivered: Provided any party hereto who shall pay in full for the bonds subscribed for by him, then such party shall receive all of said bonds and said stock so subscribed for.

In case of default by any of the parties hereto in making any of said payments, as provided, the parties so in default shall forfeit all right to make any further payments hereunder or to receive any further bonds or shares in accordance herewith.

All moneys paid in hereunder to be used for the construction and equipment of the Lake Street Elevated Railroad Company in accordance with contract made with Messrs. Underwood & Green therefor.

Negotiable receipts of said American Trust & Savings bank shall be given, evidencing the right of the holder thereof to the amount

of shares above specified, except for stock deliverable for the first instalment.

The original certificates of said shares shall be issued by the railroad company in the name of John A. Roche, Gilbert B. Shaw, William Ziegler, Willard R. Green, and Clarence A. Knight, as trustees, for the purpose of holding and voting said stock, as herein specified. Said John A. Roche, G. B. Shaw, William Ziegler,
557 W. R. Green, C. A. Knight, and John F. Moffett shall endorse said certificates in blank, which shall remain in the custody of the American Trust & Savings bank until the expiration of said voting trust on, to wit, May 1st, 1894. Said parties named as trustees, or a majority of them, shall vote said stock as a unit at all stockholders' meetings of said railroad company for a period of until May 1st, 1894, at which time said trust shall be dissolved and the stock shall be issued to the parties holding the certificates of said trustees for the same upon the surrender and cancellation of said certificates.

Dated this fourth day of February, A. D. 1893."

STATE OF ILLINOIS, } ss.:
County of Cook, }

In the Circuit Court of Cook County.

To the honorable the judges of the circuit court of Cook county, in chancery sitting:

Humbly complaining, your orator, The Lake Street Elevated Railroad Company, a corporation creating and subsisting under and by virtue of the laws of the State of Illinois, respectfully represents, shows, and makes known unto your honors by this its amended bill that it is a corporation duly organized and
558 subsisting under and by virtue of an act of the legislature of the State of Illinois providing for the incorporation of associations that may be organized for the purpose of constructing railways and maintaining and operating the same, and for prescribing and defining the duties and limiting the powers of such corporations when so organized, approved and in force March 1st, 1872, as by the act of incorporation of your orator, ready to be produced in court, will more fully and at large appear; that your orator was organized so as aforesaid in the month of August, 1892, with a capital stock of five million ($5,000,000.00) dollars, divided into fifty thousand shares of one hundred dollars ($100.00) each; that on the 23rd day of December, A. D. 1892, William Ziegler, defendant hereinafter named, was elected a director of your orator in the place of Michael C. McDonald, theretofore resigned; that at the time of the election of said Ziegler in place of said McDonald, and shortly prior thereto, said McDonald had contracted to sell to one F. L. Underwood and W. R. Green, hereinafter named, a majority of the capital stock of your orator issued prior to the subscription by one John H. Miller for fifteen thousand shares, par value of one million five hundred thousand ($1,500,000) dollars, of the capital stock of your orator, and that said controlling interest in the stock of your orator

so given to said Underwood and Green, by the knowledge of said Ziegler, was so given to enable the said Underwood & Green
559 to obtain a construction contract for the road of your orator at a price greatly in excess of its real worth, as will fully and largely hereinafter appear; that among the subscribers to the capital stock of your orator in its original stock subscription was one John H. Miller, who subscribed for fifteen thousand (15,000) shares, of the par value of one million five hundred thousand ($1,500,000) dollars; that the said Miller, so subscribing as aforesaid, was a young man absolutely without means to take and pay for the said stock so subscribed, and that on, to wit, the 28th day of January, A. D. 1893, the board of directors of your orator approved and confirmed the subscription of the said Miller so made as aforesaid.

Further complaining, your orator shows and makes known unto your honors that on, to wit, the first day of February, A. D. 1893, the directory of your orator called a special meeting of its stockholders to be held on the 6th day of April, A. D. 1893, to submit to the said stockholders at said meeting the questions:

First. Of increasing the capital stock from five million ($5,000,000) dollars, so incorporated as aforesaid, to ten million ($10,000,000) dollars.

Second. The issuing of six million five hundred thousand ($6,500,000) dollars of five per cent. gold bonds and to secure the same by trust deed on the property, rights, and franchises of your orator.

560 Both of which propositions were approved by the said Ziegler, he then and there at the said meeting so held as aforesaid voting affirmatively on the said questions, and that in accordance with the said action of the said stockholders, so held on the said first day of February, A. D. 1893, as aforesaid, in the month of April, A. D. 1893, the capital stock of your orator was, by due process of law, increased to ten million ($10,000,000) dollars, consisting of one hundred thousand shares of the par value of one hundred ($100.00) dollars each.

Further complaining, your orator shows and makes known unto your honors that at the meeting of the directory of your orator held on the second day of February, A. D. 1893, a form of contract to be entered into by and between your orator and one Frank L. Underwood and one Willard R. Green, doing business as contractors under the firm name and style of Underwood & Green, for the construction and equipment of the road of it, your orator, was presented and discussed, the said Ziegler being present at the said meeting and acting as a director of it, your orator; that at a meeting of the directory of your orator held on, to wit, the third day of February, A. D. 1893, and on the express motion of him, the said Ziegler, the consideration of the contract for the construction and equipment of the lines of the road of your orator theretofore, on the second day of February, A. D. 1893, presented and discussed, was taken up and a contract then and there was formulated
561 which was agreed upon by the directory of your orator and

by the said Underwood & Green, and the president and secretary of your orator were then and there authorized and directed for and on behalf of your orator to execute such contract; that at the said meeting so held on the third day of February, A. D. 1893, as aforesaid, a resolution was passed by the directory of your orator accepting from the said John H. Miller his two certain promissory notes for the sum of seven hundred and fifty thousand ($750,000) dollars each, dated of the date December 23rd, A. D. 1892, due respectively six months and one year after the date thereof, in full payment, satisfaction, and discharge of all liabilities of the said Miller for and on account of his subscription to the capital stock of your orator so by him made, as aforesaid, and on, to wit, the first day of September, A. D. 1892, for one million five hundred thousand ($1,500,000) dollars, with this proviso:

"Provided, however, that said Miller shall obtain from the person, firm or corporation who may contract for the construction and equipment of the railroad of this company an acceptance of said notes on account of payment for labor and materials to be furnished to this company for the completion and equipment of said railroad.

"Resolved, further, That upon said Miller executing and delivering to this company his two promissory notes an agreement with the person, firm or corporation who may contract for the
562 construction and equipment of the railroad of this company, to accept said notes as in this resolution provided that thereupon the president and secretary of this company are authorized and directed to issue to the said John H. Miller certificates for one million five hundred thousand ($1,500,000) dollars of the capital stock of this company fully paid and non-assessable."

And which resolution, with its proviso, as aforesaid, was unanimously passed by the board at the instance and by and upon the second of the said Ziegler, and which said resolution is hereto attached as "Exhibit A," and by reference thereto is made a part hereof.

Further complaining, your orator shows and makes known unto your honors that on, to wit, the fourth day of February, A. D. 1893, the directory of your orator, the said Ziegler being present and acting, and your orator here states and charges the fact to be that the said Ziegler was so present and acting, directed the president and secretary of your orator to execute and deliver the contract agreed upon at the meeting of the directory of your orator so held on the third day of February, A. D. 1893, as aforesaid, with the said Underwood & Green, as aforesaid, and that prior to the making of the said contract between the said Underwood & Green, as aforesaid, and your orator, of date February 4th, A. D. 1893, as aforesaid, the said Ziegler was interested with the said Underwood & Green in
563 obtaining the said contract in question from your orator, and that he, the said Ziegler, furnished them, the said Underwood & Green, with assistance from time to time for the purpose and to the end of enabling them, the said Underwood & Green, to obtain the said contract from your orator so made, as aforesaid,

and that he, the said Ziegler, was interested in the said contract in connection with the said Underwood & Green at the time it was let to them, so as aforesaid, and that he, the said Ziegler, subsequently to the letting of the said contract to them, the said Underwood & Green, as aforesaid, furnished them, the said Underwood & Green, money and other assistance to enable them to carry out the said contract so by them entered into, as aforesaid, with your orator.

Further complaining, your orator shows and makes known unto your honors that on, to wit, the said fourth day of February, A. D. 1893, the said contract so directed by the directory of your orator, as aforesaid, was entered into by and between the said Underwood & Green as copartners, as aforesaid, with your orator, and that under and by virtue of the said contract the said Underwood & Green agreed to furnish the labor and material for and to construct, build, and complete the railroad of your orator to the extent of, to wit, seven miles and furnish forty-eight single passenger stations upon the line of its said railroad, including terminal stations, build certain shops, sheds, and engine-houses as in said contract
564 set forth, and to also furnish twenty-five locomotive engines and one hundred and twenty-five passenger cars for the use by your orator upon its line of railroad when complete, all in accordance with the said contract between the said Underwood & Green and your orator, reduced to writing and bearing date the fourth day of February, A. D. 1893, as aforesaid; that under and by virtue of said contract the said Underwood & Green were to receive as compensation for the building of said railroad, stations, workshops, cars, locomotives, the sum of eleven million seven hundred and ten thousand ($11,710,000) dollars, payable six million five hundred thousand ($6,500,000) dollars thereof in the full-paid capital stock of your orator at par, or such an amount of said capital stock as would with the stock of your orator then outstanding make the total capital stock of said company ten million ($10,000,000) dollars, and five million one hundred and fifty thousand ($5,150,000) dollars thereof in the first mortgage five per cent. gold bonds of your orator at par, the said bonds being a part of the proposed issue of six million five hundred thousand ($6,500,000) dollars par value of bonds; each of said bonds to be for the sum of one thousand ($1,000) dollars, payable, in gold coin of the then present standard of weight and fineness, on the first day of July, A. D. 1930, with interest at the rate of five per cent. per annum, payable in like gold coin on the first days of January and July of each year, all of which said bonds were to be equally secured by a mortgage or deed of
565 trust to be a first lien upon all the property, rights, and franchises of your orator, whether then held or thereafter acquired, and sixty thousand ($60,000) dollars in cash, as was in the said contract provided, as by said written contract between the said Underwood & Green and your orator, ready to be produced in court, *as* will more fully and at large appear, a copy of which is hereto attached as "Exhibit B," and by reference thereto is made a part hereof.

Further complaining, your orator shows and makes known unto

your honors that at the time the contract of February fourth, A. D. 1893, was entered into and prior thereto it was understood and agreed by and between the directory of your orator and the said Underwood & Green that the capital stock of your orator should be increased five millions of dollars, and that the said Underwood & Green should obtain the stock subscribed for by the said Miller, so as aforesaid, and should subscribe for the entire increase of capital stock, so as aforesaid, which said subscription it was intended would give the said Underwood & Green control of a majority of the capital stock of your orator, and that the said Underwood & Green did in fact subscribe for the entire increase of five million ($5,000,000) dollars of stock of your orator, and did obtain the stock so subscribed for by the said Miller, as aforesaid, and in consequence of such obtaining and such subscription the said Underwood & Green did obtain a controlling interest in the stock of your orator
566 at the time the stock of your orator was actually increased, to wit, April third, A. D. 1893, the said Underwood & Green actually and absolutely controlled a majority of the stock of your orator, with which it then had a contract to construct its road.

Further complaining, your orator shows and makes known unto your honors that in accordance with the said contract the capital stock of your orator was increased from five million ($5,000,000) dollars to ten million ($10,000,000) dollars, as hereinbefore stated and set forth, and that your orator did duly make, execute, acknowledge, and cause to be recorded, in accordance with law, its first mortgage or deed of trust, by which it, your orator, conveyed to the American Trust & Savings bank, a corporation duly organized and subsisting under and by virtue of the laws of the State of Illinois, as trustee, and the Farmers' Loan & Trust Company, a corporation duly organized and subsisting under and by virtue of the laws of the State of New York cotrustee, all of its property and assets of every name, nature, and description which it then at the time of the causing of the said mortgage or deed of trust owned or in which it had any interest, and all property and assets of every name, nature, and description which it might thereafter acquire, as by said mortgage or deed of trust, ready to be produced in court, will more fully and at large appear, a copy of which said mortgage or deed of trust is hereto attached and marked Exhibit C,
567 and by reference thereto is made a part hereof.

Further complaining, your orator shows and makes known unto your honors that at the meeting of the directory of your orator held on, to wit, the 17th day of May, A. D. 1893, the said John H. Miller presented to the directory of your orator an acceptance by the said Underwood & Green, contractors as aforesaid, of his, the said Miller's' notes on account of their said contract, and it was resolved by the directory and the secretary was directed, upon the surrender by the said Miller to your orator of a certain certificate of stock for fifteen thousand shares issued to said Miller as fully paid, that the treasurer issue and deliver to the said Underwood & Green the promissory notes of the said Miller on the said Underwood & Green delivering to the American Trust & Savings

bank fifteen hundred shares of the capital stock of this your orator, to be held by the bank under a certain underwriting agreement hereinafter more fully described, and also delivered thirteen thousand five hundred shares of the capital stock of your orator, to be by the president held and turned over to the said Underwood & Green or their order when they, the said Underwood & Green, should be entitled to receive the same under the said contract and the said underwriting agreement so hereinbefore referred to as aforesaid; that at a meeting of the directory of your orator held on, to wit, the seventeenth day of May, A. D. 1893, fifty
568 thousand shares of the capital stock of your orator *was* directed to be issued to the said Underwood & Green, and that the said Ziegler, as aforesaid, subscribed for five hundred thousand dollars of the said bonds and paid therefor ninety cents of the par value thereof, and that with his said subscription of said five hundred thousand dollars' worth of bonds at par value, as aforesaid, he, the said Ziegler, was entitled to receive and did receive of the stock of your orator five hundred thousand dollars of their face value without any other cost or charge other than the said ninety per cent. for the said five hundred thousand dollars of bonds so by him subscribed for as aforesaid, and that by reason of a secret agreement between him, the said Ziegler, and the said Underwood & Green, hereinafter more fully stated and set forth, and by virtue of that agreement and contract he obtained one hundred and twenty-five thousand additional shares of the capital stock of your orator without any cost, charge, or expense to him whatsoever, and that in addition to the said one hundred and twenty-five thousand shares so by him acquired, as aforesaid, under, through, and by virtue of the said agreement with said Underwood & Green, as aforesaid, he, the said Ziegler, acquired from the said Underwood & Green other stocks and bonds of your orator, the exact amount of which is to your orator unknown, but it states upon information and belief and positively charges the fact to be that the
569 amount of stocks and bonds so obtained was at least equal to the amount of cash by the said Ziegler paid for his subscription to the said bonds of your orator, so by him made as aforesaid, and that in addition to the five hundred thousand dollars in bonds of your orator so subscribed by the said Ziegler, as aforesaid, he afterwards purchased, to wit, one hundred and fifty-three thousand face value of the bonds of your orator, for which he, the said Ziegler, paid, to wit, fifty-two per cent. of the face value thereof.

Further complaining, your orator shows and makes known unto your honors that the said Underwood & Green did not nor did either of them have the money, funds, or property with which to build the said railroad stations and machine shops, and to build or purchase the said cars or locomotives, and that the said Underwood & Green did not have the money, funds, or property with which to perform their contract so made with your orator, as aforesaid, but that the said Underwood & Green did propose to and did undertake to raise the funds necessary to carry out the said contract with your orator by means of what is commonly known and styled an under-

writing agreement—that is to say, that the said Underwood & Green proposed to enter into an agreement or contract with such persons, firms, or corporations as they could induce to make such agreement with the said Underwood & Green, by which agreement the
570 said persons, firms, or corporations were to agree to purchase from the said Underwood & Green from time to time a portion of the stocks and bonds to be earned by the said Underwood & Green under and by virtue of their said contract with your orator, at a fixed price, and that in pursuance of such plan or scheme said Underwood & Green caused to be prepared a certain underwriting agreement, a copy of which is attached hereto and marked "Exhibit D," and by reference thereto made a part hereof.

Further complaining, your orator shows and makes known unto your honors that at the time said contract between your orator and the said Underwood & Green was made, as aforesaid, and at the time the capital stock of your orator was so increased, as aforesaid, and at the time said underwriting agreement was prepared, as aforesaid, the said William Ziegler was a director of your orator, as hereinbefore stated and set forth, and participated, as such director, in all the acts and doings of your orator; that the said Ziegler was first elected a director of your orator on, to wit, the 23rd day of December, A. D. 1892, as hereinbefore stated and set forth, and thereupon, upon his said election, accepted such position as a director of your orator and assumed the duties pertaining thereto and continued to act as such director until the 9th day of January, A. D. 1894, and that on the 9th day of January, A. D. 1894, the said Ziegler was re-elected a director of your orator for the period of three years, and accepted such position and assumed the duties pertain-
571 ing thereto and continued to exercise such duties and powers as such director.

Further complaining, your orator shows and makes known unto your honors that before the said contract between your orator and the said Underwood & Green was made, executed, and delivered as aforesaid, or at the time said contract was made, executed, and delivered, or shortly thereafter, the said Underwood & Green entered into a secret agreement or understanding with the said Ziegler, he, the said Ziegler, being then and there a member of the board of directors of your orator as aforesaid, and in and by which said agreement or understanding said Ziegler was to become a subscriber to the said underwriting agreement, and was to subscribe for a large number of bonds, and was to agree to take from the said Underwood & Green a large number of bonds to be received by said Underwood & Green under and by virtue of their said contract with your orator, and that it was secretly agreed between the said Ziegler and the said Underwood & Green that the said Ziegler was to receive from said Underwood & Green large benefits and advantages which other signers of said underwriting agreement would not and did not receive, and it was secretly agreed between said Underwood & Green and said Ziegler that said Ziegler should receive from the said Underwood & Green stock of your orator aggregating 125% of the face value of the bonds so subscribed

572 for by the said Ziegler under said underwriting agreement, and that in addition thereto the said Ziegler was to receive from said Underwood & Green a large amount of stocks of your orator and a large amount of the bonds to be issued by your orator, as aforesaid, in excess of the bonds to be subscribed for by said Ziegler, and 125% of stock in addition thereto.

Further complaining, your orator shows and makes known unto your honors that said Ziegler was in other ways unknown to your orator, and while acting as such director, as aforesaid, interested with the said Underwood & Green in the proceeds derived by said Underwood & Green from the contract obtained by the said Underwood & Green with your orator for building its elevated railroad aforesaid and equipping the same, and that he, the said Ziegler, derived large benefits and gains therefrom, the exact amount of which is to your orator unknown.

Further complaining, your orator shows and makes known unto your honors that the said Ziegler, being a director of your orator, as aforesaid, knew that it would not cost to complete and equip said line of railroad, cars, shops, and locomotives, as provided by said contract between your orator and the said Underwood & Green, anywhere near the sum named in said contract, but about the sum of three and one-half million dollars, and that the sum named in the said contract was largely in excess of the actual cost of
573 the said railroad and equipment; yet notwithstanding such fact and having said secret or private agreement with said Underwood & Green, the said Ziegler joined with the other directors of your orator affirmatively in letting said contract to the said Underwood & Green as hereinbefore set forth.

Further complaining, your orator shows and makes known unto your honors that in said contract between your orator and the said Underwood & Green it is provided that in case the said Underwood & Green should obtain an underwriting agreement in good faith and by responsible parties for said bonds and said stock so to be paid for, as aforesaid, under said contract within a reasonable time, not to exceed thirty days, to the amount of four million dollars of said bonds, at 90 cents on the dollar, with the provision that the board of directors of your orator should have the right to extend such period for said underwritings to such time as they might deem just and reasonable, and said contract also provided that if such underwriting was not obtained within the time as provided by said contract or within such extension of time, then such contract should become null and void, and all the securities and property received by said Underwood & Green thereunder should be returned to your orator; all of which is more particularly set forth in said contract, reference to which is hereby made.

574 Further complaining, your orator shows and makes known unto your honors that the said Underwood & Green did not secure within said thirty days, nor within any extension of such time by the board of directors of your orator, in good faith and by responsible parties, the underwriting of four million dollars of said bonds; and your orator further shows unto your honors that

the said Ziegler knew of the provision in said contract between said Underwood & Green and your orator and knew of the provisions of said underwriting agreement; yet notwithstanding the fact that said four million dollars of bonds were not subscribed for in good faith by parties financially responsible within the time fixed under the said contract, said Ziegler, conspiring with said Underwood & Green, permitted and allowed, as a director of said company, the said Underwood & Green to proceed with said contract.

Further complaining, your orator shows and makes known unto your honors that the said Underwood & Green did not build and equip said railroad within the time fixed under said contract, viz., November 24, 1893, but wholly failed and neglected so to do; and your orator shows unto your honors that such neglect and failure was well known to said Ziegler as a director of your orator; yet, notwithstanding such fact, the said Ziegler, as a director of your orator, conspired with the said Underwood & Green and permitted and allowed them, the said Underwood & Green, to proceed with the work of completing the said contract, as aforesaid.

575 Further complaining, your orator shows and makes known unto your honors that the said Underwood & Green did, finally and long after the time limited in said contract, complete the said railroad and equipment, but did not complete and equip the same in accordance with the terms and conditions of the said contract, but your orator shows unto your honors that the said Ziegler, although these facts were well known to him as a director in said company, still conspiring with the said Underwood & Green, permitted them, the said Underwood & Green, to receive from your orator the bonds, stock, and cash, as provided by said contract, and that there *was* issued and delivered to said Underwood & Green, with the knowledge and consent of the said Ziegler as a director of your orator, the bonds, stock, and cash as provided in the said contract: and your orator further shows unto your honors that of the bonds so received by the said Underwood & Green, as aforesaid, the said Underwood & Green, in accordance with said secret understanding and agreement with the said Ziegler, or in accordance with other secret agreement or agreements made with the said Ziegler, turned over and delivered to the said Ziegler five hundred bonds and six hundred and twenty-five thousand dollars, par value, of the stock of your orator, and in addition thereto a large number of the bonds and a large amount of the stock issued to them as aforesaid, the exact number of which bonds and the exact number of which stock is to your orator unknown.

576 Further complaining, your orator shows and makes known unto your honors that the said Underwood & Green never did in fact complete the said seven miles of road of your orator, as required by the terms of the said contract, but did in fact complete six miles and two thousand and fifty-nine feet of the said seven miles so agreed by them to be constructed for your orator, and that the true value of the work done by the said Underwood & Green for your orator was, to wit, the sum of three million three hundred and seventeen thousand dollars, while by the contract between

your orator and the said Underwood & Green, hereinbefore described, and which is made an exhibit hereto, it was provided that the said Underwood & Green should receive for building the said seven miles eleven million seven hundred and ten thousand dollars; and your orator further states, shows, and makes known to the court in this behalf, and charges the fact to be, that the actual cost to your orator of building the said six and a fraction miles thereof, as aforesaid, was sixteen million five hundred and ninety-three thousand dollars; and your orator further states and charges the fact to be in this behalf upon its information and belief that the said Ziegler, in so permitting and allowing said Underwood & Green to proceed with the work of completing the said contract, as aforesaid, and permitting, as a director of your orator, the work to be long drawn out, did so to the end that he, the said Ziegler, might be personally benefited pecuniarily, by virtue of his secret
577 agreement so existing between him and the said Underwood & Green; and your orator further states upon information and belief that the said Ziegler was in truth and in fact greatly benefited pecuniarily and to the great detriment of your orator because of the delay of such construction and because of such secret agreement.

Further complaining, your orator shows and makes known unto your honors that the said Ziegler, as one of the directors of your orator, as aforesaid, was responsible and accountable to your orator for the faithful, impartial, and honest discharge of his duty as a director of your orator, but notwithstanding such duty on the part of him, the said Ziegler, he entered into said secret and collusive arrangement or agreement with the said Underwood & Green above set forth, and your orator was entitled to the bonds and stocks so turned over to him, the said Ziegler, by the said Underwood & Green by virtue of the secret agreement or agreement- between the said Underwood & Green and the said Ziegler, and that by reason of the fact that said contract was let at an exorbitant price by the aid and co-operation of said Ziegler your orator was deprived of large amounts of money, stocks, and bonds justly, legally, and lawfully its property, and also by reason of the permission to the said Underwood & Green to drag out the work and not perform the same in accordance with the terms of their contract, actively
578 participated in by the said Ziegler, your orator is greatly damaged in the premises, and your orator charges that the said Ziegler is liable to and accountable to your orator for the bonds, stocks, money, and other properties which the said Ziegler received from the said Underwood & Green by virtue of said secret agreement or agreements, and is liable to and accountable to your orator for the loss and damage which your orator has sustained by reason of his, the said Ziegler's, failure to perform his duty as a director of your orator, whereby it was deprived of a large amount of bonds, stocks, cash, and other valuables.

Further complaining, your orator shows and makes known unto your honors that of the bonds so received by the said Ziegler from the said Underwood & Green, as aforesaid, the said Ziegler has sold

or transferred a portion thereof to George Cleveland; a portion thereof to Effingham H. Nichols; a portion thereof to William M. Anden; a portion thereof to Charles Smith; a portion thereof to James B. Ryan; a portion thereof to William R. Peters; a portion thereof to Jere Johnson, Jr.; a portion thereof to James V. S. Woolley; a portion thereof to Oliver H. McMahon; a portion thereof to Edward Entwistle; a portion thereof to Lawrence E. Ellis, and a portion thereof to Lizzie Wentworth Wright; and your orator shows unto your honors that the said Ziegler and said other parties last named now claim to be the owners of bonds as follows:

579 William Ziegler, of 400 bonds; George Cleveland, of 21 bonds; Effingham H. Nichols, of 55 bonds; William Van Anden, of 50 bonds; Charles Smith, of 15 bonds; James B. Ryan, of 12 bonds; William R. Peters, of 13 bonds; Jere Johnson, Jr., of 10 bonds; James V. S. Woolley, of 10 bonds; Oliver H. McMahon, of 5 bonds; Edward Entwistle, of 5 bonds; Lawrence E. Ellis, of 4 bonds, and Lizzie Wentworth Wright, of 5 bonds; but whether the six hundred bonds here mentioned are all of the bonds received by said Ziegler by virtue of this secret agreement or agreements your orator is not informed and has no means of ascertaining except by an accounting under the order and direction of this honorable court.

Further complaining, your orator shows and makes known unto your honors that it is not informed as to whether the said persons above named did actually purchase the bonds now claimed to be owned by them of the said Ziegler and pay a consideration therefor or whether the said Ziegler transferred said bonds to said persons merely for the purpose of making it appear*ing* that such persons above named were the owners of such bonds, the said Ziegler remaining in truth and in fact the real owner thereof; but your orator charges the fact to be upon information and belief that the said persons above named and each of them received said bonds now claimed to be owned by them respectively as aforesaid from the said Ziegler well knowing all the facts and circumstances under which the said Ziegler received said bonds, said parties being

580 the intimate friends and business associates of said Ziegler, and said parties have acted and are now acting in concert with said Ziegler in all matters pertaining to said bonds.

Further complaining, your orator shows and makes known unto your honors that it has offered to pay to said Ziegler the amount which said Ziegler paid for the said bonds and stocks so obtained by him from said Underwood & Green, as aforesaid, together with legal interest thereon from the time he so paid out said amount, and demanded that said Ziegler surrender up to your orator the bonds and stocks so obtained by him as aforesaid; but your orator shows unto your honors that the said Ziegler has not accepted such proposition, and that said Ziegler and those to whom he has transferred bonds as aforesaid now claim to be the legal and lawful owners of such bonds and entitled to the possession thereof and demand that your orator shall recognize the said Ziegler and the other persons above named as the legal and lawful owners of such

bonds and pay to the said William Ziegler and the other persons above named interest upon such bonds so held by them as aforesaid; but your orator shows unto your honors that the said Ziegler and the other persons above named are now conspiring together to induce the American Trust & Savings bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, being the trustee and the cotrustee named in the mortgage hereinbefore mentioned and described, to take possession of
581 the elevated railroad of your orator, together with all the appurtenances and equipment thereunto belonging and appertaining, or to proceed and foreclose the said mortgage or trust deed by reason of the non-payment to the said Ziegler and the other persons above named of interest upon the bonds so obtained and held by them respectively as above set forth, and your orator shows unto your honors that the said Ziegler and the other persons above named have served upon the American Trust & Savings bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, a notice in writing, demanding that said trustee and cotrustee *to* take possession of the railroad of your orator and the appurtenances and equipment thereunto belonging and appertaining.

Further complaining, your orator shows and makes known unto your honors that the said American Trust & Savings bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, your orator is informed and believes, have no knowledge of the facts hereinbefore set forth, and may, and your orator believes they will, unless restrained by the order and injunction of this honorable court, as therein prayed, at the request of said Ziegler and the other persons hereinbefore named, take possession of the road of your orator and the appurtenances and equipment thereunto belonging and appertaining thereto, or will, at the request of said persons, proceed by a suit in equity to foreclose said mortgage or trust deed, and your orator shows unto your honors that if such action is taken
582 by said trustee and cotrustee it will greatly injure and impair the credit of your orator and impair the value of its property and assets and interrupt the present regular running of its trains and greatly depreciate the value of the bonds of the company now outstanding and held by other persons *bona fide* and in good faith.

Further complaining, your orator shows and makes known unto your honors that no person other than those conspiring with said Ziegler, as aforesaid, has made any demand upon said trustee or cotrustee to take any action whatever, but, on the contrary, that persons owning more than 6,000 bonds of your orator do not desire said trustee or cotrustee to take possession of said railroad or to foreclose said mortgage, and have notified said trustee and cotrustee to take no action whatever against your orator.

Further complaining, your orator shows and makes known unto your honors that it, your orator, fears and verily believes that if the said Ziegler and the other persons above named are notified of the filing of this your orator's bill of complaint they will immediately sell, assign, transfer, or otherwise put out of their possession or con-

trol the said bonds so held by them, as aforesaid, to *bona fide* holders thereof for value.

Further complaining, your orator shows and makes known unto your honors that said William Ziegler is a resident and citi-
583 zen of the State of New York, and that so far as your orator is able to ascertain the said Ziegler has no property or effects within the State of Illinois which can be reached by process of law, and that so far as your orator has been able to ascertain and your orator verily believes that the other persons above named to whom the said Ziegler has transferred bonds, as above set forth, are not residents of the State of Illinois and have no property or assets within the State of Illinois which can be reached by process of law.

Forasmuch, therefore, as your orator is remediless in the premises except in a court of equity, where matters of this kind are properly cognizable and relievable, your orator files this its bill of complaint, and makes William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust & Savings Bank, trustee, and Farmers' Loan & Trust Company, cotrustee, parties defendant to this its bill of complaint, and prays:

First. That the said defendants be required to appear and answer this your orator's bill of complaint, but not under oath, the answer under oath being hereby expressly waived.

584 Second. That an accounting may be had between the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright and your orator, and that upon payment to the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright of the amount which the said William Ziegler actually paid for said bonds and stock obtained by the said Ziegler from the said Underwood & Green, as hereinbefore set forth, the said Ziegler and the said George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright may be decreed to return to and surrender up to your orator all the bonds and stock and other property, if any, obtained by the said William Ziegler from the said Underwood & Green, as hereinbefore set forth, your orator hereby offering to pay what, if anything, the said William Ziegler paid for the said bonds and stock so obtained by him, as aforesaid, from the said Underwood & Green, and your orator also hereby offers to pay to the said William Ziegler and the said George Cleveland,
585 Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr.,

James V. S. Woolley, Oliver H. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright what, if anything, shall appear to be due to them or either of them upon such an accounting.

Third. That in the meantime the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr.; James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright and each of them and their respective attorneys, solicitors, agents, and servants be restrained and enjoined from selling, assigning, transferring, or otherwise putting out of their possession or control any of the bonds or stock of the Lake Street Elevated Railroad Company now owned by them or either of them now in their possession or under their control and obtained from Underwood & Green by Ziegler.

Fourth. That the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr.; James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright may be enjoined and restrained from commencing any suit, either at law or in equity, upon said bonds or the coupons thereto attached, and from collecting or attempting to collect any interest upon said bonds or coupons or any part or portion thereof.

586 Fifth. That said American Trust & Savings Bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, and each of them, their respective attorneys, solicitors, agents, and servants, may be restrained or enjoined from taking possession of the railroad of your orator or the appurtenances thereof or any part or portion thereof upon or by reason of or at the request of the said Ziegler and the said George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr.; James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright or either of them or any other person or persons acting for or on their behalf, and from commencing any suit to foreclose said trust deed upon or by reason of or at the request of the said Ziegler or the said George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr.; James V. S. Woolley, Oliver H. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright, or either of them or of any person or persons acting for and on their behalf.

Sixth. That your orator may have such other and further and different relief in the premises as equity may require and to your honors may seem meet.

May it please your honors to grant unto your orator a writ of summons in chancery, directed to the said William Ziegler,

587 George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr.; James V. S. Woolley, Oliver A. McMahon, Ed-

ward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, and the American Trust & Savings Bank, trustee, and the Farmers' Loan & Trust Company, cotrustee, commanding them and each of them to appear before this honorable court on the first day of the next term thereof, to be held at the court-house, in Chicago, in the county of Cook aforesaid, and then and there to answer this bill, etc.

And may it please your honors to grant unto your orator the people's writ of injunction, immediately and without notice, to be directed to the said William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr.; James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, the American Trust & Savings Bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, their respective attorneys, solicitors, agents, and servants, restraining them and each of them as hereinbefore prayed.

And your orator will ever pray, etc.

THE LAKE STREET ELEVATED RAILROAD COMPANY,

[SEAL.] By D. H. BOUDLRBACK, *President.*

Attest: R. LAUGHLIN, *Sec'y.*

EGBERT JAMIESON,
Counsel for Compl't.

588 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant, }
vs. }
WILLIAM ZIEGLER ET AL., Defendants. }

STATE OF ILLINOIS, } ss:
County of Cook, }

D. H. Louderback, being first duly sworn, deposes and says that he is the president of the above named complainant in the above-entitled cause, The Lake Street Elevated Railroad Company.

Affiant further says that he has read the attached and foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are therein stated to be upon information and belief, and as to those matters he believes it to be true.

Affiant further says that by reason of the matters and things set forth in said bill of complaint he believes, and so states the facts to be, that the rights of the complainant will be unduly prejudiced if the injunction prayed in said bill of complaint is not issued immediately and without notice to the defendants.

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And affiant further says that he is advised and informed, and so states the fact to be, that the rights of the complainant in this cause

will be unduly prejudiced if the injunction in this cause is not issued immediately and without notice to the defendants.

D. H. LOUDERBACK.

Subscribed and sworn to before me this 13th day of January, A. D. 1896.

[SEAL.] ALEXANDER M. SAVAGE,
Notary Public.

590 "EXHIBIT A."

"Resolved, That the company accept from John H. Miller his two certain promissory notes for seven hundred and fifty thousand dollars ($750,000) each, dated December 23rd, 1892, and due respectively six months and one year after date, in full payment, satisfaction, and discharge of all liabilities of said Miller for or on account of his subscription to the capital stock of this company on September 1st, 1892, for one million five hundred thousand dollars ($1,500,000) of the capital stock of this company:

"Provided, however, that said Miller shall obtain from the person, firm, or corporation who may contract for the construction and equipment of the railroad of this company an acceptance of said notes on account of payment for labor and materials to be furnished to this company for the completion and equipment of said railroad.

"Resolved further, That upon said Miller executing and delivering to this company his two promissory notes and an agreement with the person, firm, or corporation who may contract for the construction and equipment of the railroad of this company to accept said notes, as in the resolution provided, that thereupon the president and secretary of this company are authorized and directed to issue to the said John H. Miller certificates for one million five hundred thousand dollars ($1,500,000) of the capital stock of this company, fully paid and non-assessable."

591 (It is stipulated between the parties hereto that Exhibit "B" to the said amended bill of complaint is identical in its terms with Exhibit "A" to said original bill of complaint in said suit of The Lake Street Elevated Railroad Company *versus* William Ziegler *et al.*)

592 (It is stipulated between the parties hereto that said Exhibit "C," mentioned in and attached to said amended bill of complaint in said case of The Lake Street Elevated Railroad Company *versus* William Ziegler *et al.*, is the same trust deed, a copy of which is attached to the bill of complaint herein and admitted by the answers herein.)

593 EXHIBIT "D."

Underwriting Agreement.

Whereas, the Lake Street Elevated Railroad Company, a corporation existing under and by virtue of the laws of the State of Illinois, proposes to issue bonds to the amount of six million five hundred thousand dollars ($6,500,000) par value, drawing interest

at the rate of five per cent. (5%) per annum, both principal and interest being payable in gold coin of the present standard of weight and fineness, each of which said bonds is to be for the sum of one thousand dollars ($1,000) payable in said gold coin, on July 1st, 1928.

Said bonds to be thirty-eight (38) year bonds, and to be secured by a first mortgage upon all of said railroad company's property, real, personal and mixed, rights and franchises.

Not to exceed one million dollars ($1,000,000) of the par value of said bonds have been, or are to be, used by said railroad company in paying and cancelling a bonded indebtedness assumed by said railroad company amounting to eight hundred and twelve (812) six per cent. (6%) bonds of one thousand dollars ($1,000) each, heretofore issued by the Lake Street Elevated Railroad Company.

Five million one hundred and fifty thousand dollars ($5,150,000) par value of said six million five hundred thousand dollars ($6,500,000) of bonds, or the money derived from the sale thereof, are to
594 be used, so far as required, to complete and equip that part of the railroad of said Lake Street Elevated Railroad Company, which extends from Market street west to West 22nd street, in the city of Chicago, Illinois, and also the loop beginning and ending at said Market street, as provided by ordinances passed by the city council of the city of Chicago, November 24th, 1890, granting the right to construct said railroad, in accordance with a contract entered into by said railroad company with F. L. Underwood and W. R. Green.

Three hundred and fifty thousand dollars ($350,000) of said six million five hundred thousand dollars ($6,500,000) of bonds are to be used for the further purposes of said company, in the discretion of the board of directors.

It is understood that said six million five hundred thousand dollars ($6,500,000) of bonds are to be issued, under a mortgage, which will provide for the issuing of additional bonds thereunder, for the following purposes:

(*a.*) In adding to, extending and building additional railroad or branches, and acquiring other railroads, by construction or otherwise, at not exceeding eight hundred and fifty thousand dollars ($850,000) of bonds per mile for two-track road, fully equipped with rolling stock, stations, switches, signal stations, and necessary appurtenances.

(*b.*) Procuring equipments or rolling stock, in addition to that which the said Underwood and Green agree to furnish, for the
595 lines of road described in ordinances of November 24th, 1890.

(*c.*) Paying, adjusting or settling claims or suits for damages arising out of the building or operating said railroad, or such extensions and branches.

(*d.*) Procuring right of way and such other real estate as may be needed by the railroad company in extending, adding to and building branches of said railroad.

(*e.*) Paying any interest that may accrue and remain unpaid during the first two years of the operation of the railroad, after de-

livery and acceptance of the railroad from contractors for the same, after applying to the payment of such interest the net earnings of the railroad during said two years.

(*f*.) In case of the company eventually crossing the Chicago river, or either of its branches, on its own bridge, not exceeding five hundred thousand dollars ($500,000) of said bonds for each such bridge and its approaches.

All of the said bonds and shares of stock hereinafter specified, are to be delivered to and deposited with the American Trust and Savings Bank, of the City of Chicago, for delivery, in accordance with the provisions of this contract.

The undersigned subscribers hereto, in consideration of the prices, terms and stock to be received as hereinafter stipulated and provided, each for himself, or itself only, and not for the others, or any of them, have promised and agreed, and hereby do promise and agree to and with each other, to take and pay to the American Trust & Savings bank for the number and amount of said first-mortgage bonds written opposite our respective signatures hereto, at the price and time and on the terms and conditions hereinafter set forth, to wit:

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First. The price of said bonds shall be ninety per cent. (90 %) of par on the face of said bonds, payable at the office of the American Trust and Savings bank, in Chicago, Illinois, as follows:

Twenty per cent. (20 %) of the ninety per cent. (90 %) of the par value, as soon as four million dollars ($4,000,000) of said five million one hundred and fifty thousand dollars ($5,150,000) of bonds shall have been subscribed for in good faith by persons financially responsible for such subscriptions, or taken and paid for, and notice thereof in writing given by Messrs. Underwood and Green and the president of the railroad company to each subscriber hereto, by mailing the same to the address written with the signature hereto, and within ten (10) days after the mailing of such notice, such twenty per cent. (20) shall be paid to the American Trust & Savings bank hereunder.

The balance of the payments are to be made as follows:

Twenty per cent. (20 %) within sixty (60) days after said first installment of twenty per cent. (20 %) and twenty per cent. (20 %) within the next sixty (60) days after said second payment, and twenty per cent. (20 %) within sixty days after said third installment, and the last twenty per cent. (20 %) two hundred and forty (240) days after said first installment of twenty per cent. (20 %).

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Ten (10) days' notice in writing shall be given by the American Trust & Savings bank to each of the subscribers hereto of the time when each of said last four named installments are due and payable, by mailing a notice to the post-office address of each party as given herein, at least ten (10) days before the day fixed for the said payment to be made.

Interest upon all bonds purchased hereunder, and upon the payments made, as aforesaid, to be adjusted at the rate of five per cent. (5 %) per annum.

Upon the payment of any installment, as aforesaid, the party making such payment will be entitled to receive from said American Trust & Savings bank as many of said five per cent. (5%) bonds as such installment will pay for at ninety per cent. (90%) of par, and interest thereon adjusted as above provided. And in case said five per cent. (5%) bonds shall not be engraved and ready for delivery by said American Trust & Savings bank at the time of such payments, the party making such payments shall be entitled to the negotiable receipt of said bank, evidencing the right of the holder thereof to said five per cent. (5%) bonds when the same shall come into its possession, and which receipt shall recite that the delivery of said five per cent. (5%) bonds is secured by a deposit in the hands of said American Trust & Savings bank of the six
598 per cent. (6%) bonds of the Lake Street Elevated Railroad Company. By payment of said installments, or either of them, the party making such payment shall be entitled to such an amount of stock of said railroad company as taken at par will equal the par or face of the bonds so purchased; provided, no stock shall be delivered with the first of said payments, but said stock shall be held to secure the payment of the remaining installments, payable under this agreement, and shall be delivered upon the payment of the last of said installments, and in case said subsequent installments be not paid, as provided, shall be forfeited.

Negotiable receipts of said American Trust & Savings bank shall be given, evidencing the right of the holder thereof, to the amount of shares above specified, except for the amount of stock due on first installment.

The original certificates of said shares shall be issued by the railroad company in the name of John A. Roche, G. B. Shaw, W. R. Green, Wm. Ziegler, Clarence A. Knight and J. F. Moffett as trustees, for the purposes of holding and voting stock, as herein specified, said John A. Roche, G. B. Shaw, W. R. Green, Wm. Ziegler, Clarence A. Knight and J. F. Moffett, shall endorse said certificates in blank, which shall remain in the custody of the American Trust & Savings bank, until the expiration of said voting trust, on to wit:
May 1, 1894. Said parties, named as trustees, or a majority
599 of them, shall vote said stock as a unit at all stockholders' meetings of said railroad company, for a period of until May 1st, 1894, at which date said trust shall be dissolved and the stock shall be issued to the parties holding the certificates of said trustees for the same, upon the surrender and cancellation of said certificates.

Unless within thirty (30) days from the date hereof, at least four million dollars ($4,000,000) of said five million, one hundred and fifty thousand dollars ($5,150,000) of said five per cent. (5%) bonds shall be taken or subscribed for in good faith and by parties financially responsible for such subscriptions, upon the basis of ninety per cent. (90%) of par of said bonds and payments to be made as herein agreed, then this agreement shall cease and become null and void, and in such case no party subscribing hereto shall pay or be liable hereon for any sum or sums whatsoever.

There shall be delivered to the American Trust & Savings bank, such number of the six per cent. (6%) bonds of the Lake Street Elevated Railroad Company, now in the control of the Lake Street Elevated Railroad Company as taken at ninety per cent. (90%) of par, will be equivalent to the payments made hereunder, which are to be held as security for said payments until said railroad company shall have issued and delivered its five per cent. (5%) bonds, as above provided.

Any party hereto who shall fail to pay either payment
600 herein agreed to be paid, upon notice as herein provided, shall forfeit all right to make any further payments hereunder or to take said bonds and stock as herein provided, at the option of F. L. Underwood and W. R. Green, contractors, with the railroad company, for the construction and equipment of said railroad. Failure to pay either of the installments shall forfeit all right of the party to the stock which goes with the first payment and held by the bank for the security of said other installments.

It is further understood and agreed by and between all the parties hereto, that the money paid hereunder in installments as aforesaid, shall be used, so far as necessary, and for no other purpose, to build, construct and equip the railroad of the Lake Street Elevated Railroad Company, in the manner provided in a contract made by said railroad company with Messrs. Underwood and Green, for the doing of said work.

In witness whereof, we have hereunto caused this agreement to be signed this fourth day of February, A. D. 1893.

Names.	Address.	Bonds.	Amount.

601 Q. Mr. Louderback, how many miles of railroad has this Lake Street Company in operation and where and the equipment?

Mr. BURRY: We object to that. The allegation of the answer is that we concede—it admits the incorporation of the parties, the making of the deed of trust, the building by the complainant of an elevated railroad substantially as alleged. Now, I say we cannot improve on that after that admission.

The COURT: It wouldn't seem to me to be necessary to make any proof about it, but he may answer.

A. You mean at the present time?

Mr. KNIGHT: Yes, sir.

A. About seven miles.

Q. Where?

A. Running from West 52nd street, on Lake St., east to Wabash avenue at its intersection of Lake street, and also from a connection at Market street and Lake street to Madison street.

Q. Where?

A. In the city of Chicago.

Q. State of Illinois?

A. Yes, sir.
Q. County of Cook?
A. County of Cook.
Q. What kind of traffic do you carry on that road, Mr. Louderback?
A. Passenger traffic.
Q. Solely?
A. Solely.
Q. How many passenger cars and locomotives have you?

Mr. BURRY: Objected to.
602 The COURT: Same ruling.

A. 125 cars and 35 locomotives, to the best of my knowledge.

Mr. KNIGHT:

Q. And has stations at various points along the line of its road?
A. Yes, sir; twenty-one stations on each side.
Q. What is the daily average of passengers, Mr. Louderback?
A. For the past two months it has been very close to 35,000 passengers a day, including Sundays.
Q. Do you know, Mr. Louderback, as to what property the company had on April 7th, 1893, when this mortgage or trust deed was made?
A. No, sir; I do not.
Q. When you took charge of the road, in July, '94, how much of the road was then completed?
A. That portion of it from Madison and Market streets north to Lake street and west upon Lake street, from the intersection of Lake and Market street, to 52nd street.
Q. And what has been constructed since?
A. What is known as the Wabash Avenue extension, from the intersection of Market and Lake street, on Lake street, to the intersection of Wabash avenue and State street.
Q. And it is upon the last-named extension these letters refer to, where a recent issue of bonds was made in 1895?
A. Yes; and also including the Market Street extension.
Q. What were the earnings of the road, Mr. Louderback, in the year 1894 in reference to earnings upon the issue of bonds at that time?

603 Mr. BURRY: Objected to.
The COURT: Overruled.
Mr. BURRY: Exception.

Mr. KNIGHT: 1894?
A. Yes. My recollection, if it serves me, without looking at the record——
Q. Perhaps this will aid you. (Paper handed witness)
A. For the ten months that the road was operated under its own management, deficit, $146,725, and for the other two months the road was in the hands of the contractors, and we have no record to go by.

Mr. HERRICK: What do you mean by deficit?

A. Shortage in earning fixed charges and interest charges on its bonds.

Q. Not paying operating expenses?

A. Yes, sir.

Mr. KNIGHT: What did you do in the year 1895 with reference to scaling the bonds?

A. We scaled the bonds 40 per cent., as stated.

Q. How was that done?

Mr. HERRICK: Was that in writing?

A. We entered into an arrangement——

Mr. BURRY: In writing?

A. In writing; yes, sir.

Mr. KNIGHT: You want the writing, do you?

Mr. BURRY: Yes.

Mr. KNIGHT: Mr. Louderback, what was done as to the
604 payment of interest from the time you took charge of the road up to January, 1895, upon the bonds issued upon the mortgage? I mean simply was the interest paid.

A. The interest was not paid by the road, except a portion of it.

Q. I mean up to January, 1895—January 1st, 1895—up to that time.

A. I had nothing to do with it until after it had been paid, July 1st, 1894.

Q. And the interest had been provided for before by the bonds and paid by the trustees?

A. The interest had been provided for, as I am informed, by a loan made upon the strength of our buying the road.

Q. Now, how about the interest due upon January 1st, 1895?

A. The company had no funds to meet that payment and they arranged with the Columbia Construction Company——

Mr. BURRY: In writing?

A. By resolutions and contracts; yes, sir.

Mr. BURRY: Objected to.

Mr. KNIGHT: Who paid the interest due January 1st, 1895, upon the bonds of the Lake Street Elevated Railroad Company?

A. The Columbia Construction Company advanced the money to purchase the coupons; they were not cancelled at that time. Since then there have been 29,000 odd cancelled by money which the Lake Street road turned over for that purpose.

Q. Do you know how much money was paid on January 1st, 1895, for that purpose?

605 Mr. BURRY: For what purpose?

Mr. KNIGHT: For the purpose of taking up these coupons.

A. My recollection was and is there are about $174,000.

Q. How about interest becoming due on July 1st, 1895?

A. There was no interest paid on that date.

Q. How about interest January 1st, 1896?

A. There was no interest paid on the bonds of that date.

Q. Mr. Louderback, do you remember of having a conversation with Mr. Levi Mayer in January, 1896, the 26th?

A. Yes, sir.

Q. Who was present?

A. Mr. Burry, Mr. Shaw, Mr. Mayer, yourself, and myself, and at the last interview Judge Moran.

Q. Do you remember whether any statement was made by Mr. Burry there at that time in regard to demand upon the trustees for the foreclosure proceedings?

Mr. BURRY: Objected to as leading.

The COURT: He may answer.

A. Mr. Burry——

Mr. KNIGHT: I ask you if you remember about such a conversation.

A. Yes, sir.

Q. What was it?

A. You want the drift of the conversation?

Q. No; just in regard to that point.

A. Whether anybody else had made a demand upon the trustees in these foreclosure proceedings? Mr. Burry stated at that time positively that no one beside the bondholders included in
606 what is known as the Ziegler suit had made any request.

Q. After that conversation, Mr. Louderback, with Mr. Burry, did you send him a statement as to the condition of the road?

A. Yes, sir.

Q. In regard to its financial condition?

A. Yes, sir.

Q. Is that the statement? (Paper handed witness.)

A. It is a copy of the statement.

Paper last referred to by the witness offered and read in evidence by counsel for complainant and marked Exhibit "A" and is as follows:

"Resources.		*Liabilities.*	
Acc'ts receivable	$414,040.75	Encumbrances on real estate	$69,792.66
Bonds in treasury	101,000.00	Bills payable	571,500.00
Debenture bonds in treasury	166,200.00	Vouchers and pay-rolls	40,478.32
Income bonds in treasury	41,500.00	Taxes	14,000.00
Scrip in treasury	50.00	Coupons unpaid	277,805.00
Real estate, Humboldt Park and other places, not used for R. R. purposes	407,000.00	Reserve for 52nd St. station	20,000.00
		By balance	136,214.77
	$1,129,790.75		$1,129,790.75
Cr. balance	$136,214.77"		

607 Mr. KNIGHT: Mr. Louderback, do you remember when this deposit was made in money to pay the January, 1895, interest?

A. Yes.

Q. Was there any dispute as to who deposited that money and as to how it was to be used between you and the American Trust & Savings bank?

A. Yes; there was.

Q. Do you know what was claimed upon the part of the bank?

A. There was a doubt existing in the bank's mind as to whether it was deposited by the Columbia Construction Company or the Lake Street Elevated.

Q. Was there an agreement made at that time in regard to that? Was it not agreed at that time that the question as to whether it was deposited by the Lake Street Company or whether it was to be considered as Columbia Construction Company to be left and decided at some future time?

A. Yes, sir.

Q. That never has been decided yet, has it?

A. No, sir.

Q. And that was the reason that the agreement between the bank and yourself was drawn up, was it not, to protect the bondholders?

Mr. BURRY: Objected to.

The COURT: Objection sustained.

Mr. KNIGHT: Did you ever see that printed document, Mr. Louderback?

(Paper handed witness.)

608 A. Yes, sir.

Q. Was that an agreement between yourself and the bank that the bank should send out to the various bondholders and deliver to them?

A. Yes, sir.

Mr. KNIGHT: We offer that in evidence.

Paper last referred to marked Exhibit "B," and is as follows:

"CHICAGO, *Jan.* 1, 1895.

To the holders of coupons hereinafter referred to:

Please take notice that the coupons of the bonds maturing this day of the Lake Street Elevated Railroad Company are taken up by the undersigned, the American Trust and Savings bank, trustee, expressly under the following conditions:

The Lake Street Elevated Railroad Company on Dec. 28, 1894, deposited certain moneys with this bank to meet said interest coupons due Jan. 1, 1895. Other parties now insist that those moneys belong to them, and that said moneys should be applied not toward the payment, but only toward the purchase for them of said coupons. If it be hereafter judicially determined that their position is correct, then the said coupons so maturing Jan. 1, 1895, and taken

up by this bank will be turned over to them as purchasers thereof, uncancelled; otherwise said coupons will be treated as paid and will be cancelled by said bank. Unless you consent to the
609 conditions of this notice, the undersigned must decline to take up said coupons.

THE AMERICAN TRUST AND SAVINGS BANK, *Trustee.*

The undersigned, who is the holder and owner of — dollars of the coupons above referred to, hereby accepts and consents to all of the provisions and conditions of the foregoing notice.

—— ——.

Witness:

—— ——."

Q. Who is in possession of these coupons?

A. American Trust & Savings bank; all of them, I believe, but about 29,000.

Q. Who is referred to in this notice by "other parties"?

A. The Columbia Construction Company.

Q. As being the other parties who claim——

A. Yes, sir.

Cross-examination.

By Mr. BURRY:

Q. Mr. Louderback, what was your relation to the Lake Street Company and this property prior to July, 1894?

A. I had no particular relations with them.

Q. Were you a director or officer?

A. No, sir.

Q. Were you conversant with their affairs?

A. No, sir; not prior to my taking hold of the management.

610 Q. Did you know anything about the property in 1893?

A. Nothing except from personal inspection of it.

Q. When did you personally inspect it in 1893?

A. The first day they operated their trains over it.

Q. When was that?

A. I couldn't say.

Q. Beginning of 1894 or the fall of 1893?

A. My recollection is the fall of 1893.

Q. Previous to that inspection, did you know anything about it?

A. No, sir.

Q. Previous to that inspection, did you know anything in regard to the officers of the company?

A. No, sir.

Q. Or bondholders?

A. No, sir.

Q. How long have you lived in Chicago?

A. I came here in 1873 and left in 1877; came back again in 1879, and have been here since.

Q. Have you had any dealings directly with the officers of the Farmers' Loan & Trust Company?

A. Never.

Q. Never met any of them?

A. No one connected with them except yourself.

Q. Never had any conversations with any of them concerning the Lake Street elevated railroad?

A. No, sir.

Q. Do you know where its principal office is?

A. No, sir.

Q. As soon as you became connected with the road in July, '94, or since that time, has it paid any interest on its bonds ex-
611 cept the $29,000, of January 1st, 1895, which you have stated, interest?

A. No, sir; it could have done so had it exercised its right under the mortgage to issue bonds for the first two years, which it had a right to do.

Q. It has not done so? Answer my questions, please.

A. No, sir; we didn't exercise that right; we didn't consider it good business policy.

Q. Just answer my question. Your own counsel will call for explanations. You stated in the operation in 1894—you stated there was a deficit of $146,000, counting as part of the expense the fixed charges and interest, did you not?

A. Yes, sir.

Q. Now, leave off your interest—all interest—and consider nothing, only the receipts and operating expenses, and was there a deficit or a surplus in 1894?

A. There would be a surplus of $138,004.60 in the year '95, leaving off interest and considering only the operating expenses and revenue.

Q. Was there a deficit or a surplus for the year following?

A. A surplus.

Q. Of how much?

A. I couldn't say that without having my record.

Q. Was it as much as the preceding year?

A. I can't state that from memory.

Q. You could not state whether it was as much as the preceding year?

A. No.

612 Q. Has the company been reducing its floating indebtedness any during 1895?

A. Yes, sir.

Q. Were there any debenture bonds of the Lake Street Company actually issued to those bondholders who deposited their bonds with the trust company?

A. I should say that they were all issued to them. They simply left them there for them to take up.

Q. When was the first instalment of interest due on those debenture bonds?

A. July 1st, 1895.

Q. Was it paid?
A. It was paid.
Q. By whom?
A. Columbia Construction Company.
Q. Who was the president of that company?
A. A gentleman by the name of George A. Yuille.
Q. Are you president of the Northwestern Elevated Railroad Company?
A. I am.
Q. Did the Northwestern Elevated Railroad Company have anything to do with the payment of those debenture bonds on July 1st, 1895?
A. Paid for their account by the Columbia Construction Company.
Q. Do you know why it was paid in that manner?
A. Because the Columbia Construction Company is the company that is building the Northwestern and has the financing of the whole enterprise.
Q. Why did the Northwestern cause the interest to be paid on these debentures?
A. Because it has a guarantee contract with the Lake Street road to do so.
613 Q. Were any of the resources or funds of the Lake Street Company used in the payment of the interest upon those debentures?
A. Not a single dollar.
Q. Have you any relation to the Columbia Construction Company?
A. Not officially.
Q. Are you a stockholder?
A. Yes, sir.
Q. When the interest became due on the debenture bonds on January 1st, 1896, was it paid?
A. It was.
Q. By whom?
A. Columbia Construction Company.
Q. Has the Northwestern Elevated Railroad Company now in operation any railroad?
A. No, sir.
Q. Was the interest on the debentures January 1st, 1896, paid in the same manner that you have described for the July, 1895, interest?
A. It was.
Q. And on the same account?
A. Yes, sir.
Q. Do you know how much in amount are the coupons of the first-mortgage bonds that were due on January 1st, 1895, which remain unpaid?
A. My impression is there is about somewheres around $132,000
Q. Have you ever stated, Mr. Louderback, that the Lake Street

Elevated Railroad Company was going to pay off all its unsecured indebtedness before it would pay any of its bonds or coupons?

Mr. KNIGHT: That is objected to. No questions have been
614 asked about it and he doesn't state when or where the statement was made or what the purpose of it is.

Mr. BURRY: The gentleman has stated and attempted to prove or has introduced letters here attempting to prove that our client is acting in violation of its duty in asking to have the coupons paid. If we can show, on the contrary, that this road has declared it would pay all other indebtedness sooner than the coupons, I think it shows a proper case where there is something to be done.

The COURT: If that fact was not communicated to you, it could not have formed the basis of your action. If your question is as he stated it to any representative of the Farmers' Loan & Trust Company, he may answer, certainly.

Mr. BURRY: We have been advised that they were going to do it.

The COURT: I think it is proper enough upon your defense. You can then call him for that purpose if you desire.

Q. Mr. Louderback, has the Lake Street Company received any money from the Union Elevated Railroad Company for granting the use of its tracks to the Union Elevated Company on Lake street—use of the tracks on Lake street?

Mr. KNIGHT: That is objected to.

The COURT: Simply as not cross-examination.

Mr. KNIGHT: It is not material anywhere in the trial of this case.

The COURT: It is alleged somewhere in the bill or the
615 answer.

Mr. BURRY: It is, and——

The COURT: I think you ought not to seek to cross-examine about matters not brought out in chief. It mixes up the matter.

Mr. BURRY:

Q. Mr. Louderback, in the statement of the finances, which you say you transmitted to some person, that has been introduced as Exhibit A, there appear to be unpaid on January 26, 1896—you state that there are unpaid coupons amounting to $277,805. When did those coupons mature?

A. I couldn't state without the record.

Q. Well, was there not due the coupons of January 1st, 1896, at that time?

A. I don't think they entered into that statement, because that month's business had not yet been closed. That is my recollection.

Q. Wasn't this statement rendered to representatives of the Farmers' Loan & Trust Company as late as January 25th or 26th, 1896, as a statement of the then condition of the company in relation to a possible foreclosure?

A. I think it was.

Q. And then you did not include in this all the company's liabilities?

A. I said I could not state that without looking at my records. I had that statement made up at that time, and I could not verify it without looking at the record.

Q. There was about $178,000 of unpaid coupons at that
616 time, was there not, falling due January 1st, 1896?

A. Taking the whole issue of bonds, there would be, yes.

Q. Were they not all due?

A. Yes.

Q. What is that—were they not all due?

A. They would be due under the mortgage, yes.

Q. Well, were they not due? Never mind whether they "would be" or not.

A. Yes.

Q. Has any of them been paid by the payment of the debenture coupons?

A. No, sir.

Q. Then they were all due, were they not?

A. I said so.

Q. And $178,000 of interest due of coupons due July 1st, 1895, was also outstanding, was it not?

A. No, sir; there were $29,000, and those had been paid and cancelled.

Q. I said July 1st, 1895.

A. Yes; July 1st. I understood you January.

Q. And about $132,000 that fell due January 1st, 1895, was there not?

A. Yes, sir.

Q. Making a total of about $180,000 of coupons that were then unpaid when you made this statement, was there not?

A. Coupons—not bonds—yes; about that.

Q. Then your statement to us at that time that there was only $277,000 of coupons due was a mistake, was it not?

A. No, sir; it was not a mistake; it was taking the obligations that were actually due by the company, because the bondholders, sixty per cent. of them, had waived that.

617 Q. Then the coupons attached to the bonds that had gone into the debenture arrangement were not due on your theory—the theory that is made up on?

A. That is correct. I was giving the actual obligation of the company, and that obligation was to the construction company——

Q. When you marked here "coupons unpaid," you did not include here any coupons on the first-mortgage bonds?

A. Yes, sir; they were included; all the bonds that had not assented—coupons on those.

Q. And all of the debenture coupons that had been paid?

A. Yes, sir.

Mr. HERRICK: That is, I understand sixty per cent. of the coupons of the bonds?

A. Sixty per cent. of the first, of the original mortgage bonds.

Mr. BURRY:

Q. Have you since the date of this paper paid any interest which you say was included in that amount due on these outstanding bonds?

A. No, sir.

Q. Have you ever stated you had not paid?

Mr. KNIGHT: That is objected to.

Objection overruled.

A. I would hardly make such a statement as that, Mr. Burry.

Mr. BURRY:

Q. Have you ever done so?

A. No, sir.

618 Q. At the conference you spoke of at the office of Mr. Mayer, was anything said by any person to the effect that the foreclosure proceedings should be brought without any demand at all—independently of demands?

A. I think you took that ground personally and stated that you felt that it was within your province to do so for the Farmers' Loan & Trust Company.

Q. Regardless of any demand, whether there was a demand or not?

A. Yes, sir; you said so, and that you had the right to use your discretion, but then we went on discussing the point, and Judge Moran and myself both took the position that in that discretion the Farmers' Loan & Trust Company or any other trustee should have to be very careful how far they used that discretion when they were acting for a very small minority against the interests of a large majority, and especially as over 90 per cent. of the bonds could come in the next day and undo anything that a monority might have done.

Q. The position was taken there then by the Lake Street Company that, having the control of a majority of the bonds, they could prevent any foreclosure by a minority. Is that it?

A. No, sir; that was not the thing. It was a question——

Q. Did you not state that, that if any foreclosure suit was brought, as long as a majority were on the other side, they could go in, and under the provisions of the mortgage dismiss the suit?

A. I did not say so. It was said by one of the counsel present.

Q. One of the counsel took that position——

A. Not of our road.

619 Q. —that a majority of the bonds would control absolutely any foreclosure suit?

A. I don't think it was put in that way, Mr. Burry; you don't put it correctly. The statement was made by one of the attorneys of the other trust company—your trustee—that it would be useless to go to work and act in the matter when any action that might be taken would not be legal under the construction of the mortgage.

The Lake Street road was not a party to that statement in any way, shape, or manner.

Q. It would not be legal, because the majority would countermand the action. That was the position taken, was it not?

A. Under the mortgage.

Q. Under the mortgage?

A. That is it.

Redirect examination by Mr. KNIGHT:

Q. Mr. Louderback, did you ever receive any notice from Mr. Burry that he had ceased to act as agent of these trustees?

A. No, sir.

Q. You have never received any notice from the trustees themselves cancelling his agency, have you?

A. No, sir.

Q. Do you know, Mr. Louderback, how many bonds are outstanding that do not come into what you call the scaling arrangement?

Mr. BURRY: That is objected to.

The COURT: Why?

Mr. BURRY: Because it is not material.

620 The COURT: That was gone over on both sides on the opening. He may answer.

A. There are $876,000 belonging to individuals and $104,000 which really belong to the company and are in the company's treasury, making a total of $980,000.

Mr. KNIGHT:

Q. And of that number, $876,000, there are included in it $605,000, what they call Ziegler bonds in this suit?

A. Yes, sir.

Q. Mr. Louderback, there was one question I omitted to ask you before. It was this: What was the financial condition of the company in January, 1896, as compared to its condition in the middle of October, 1895, when the trustees applied, at Ziegler's request, commenced foreclosure proceedings?

Objected to as immaterial. Objection overruled.

A. The condition was materially better.

Q. Since October, 1895, what has been the general financial outlook of the company to the present time?

A. Very much better.

Q. Improving all the time?

A. All the time; yes.

Q. What have you done since October, 1895, toward the betterment of the road?

A. We have practically equipped it electrically from one end to the other and are about starting—the latter part of this month, I think, will start running electrically.

Q. What was the percentage of the net earnings compared
621 with the gross earnings in 1895?

Mr. BURRY: That is objected to.

The COURT: I think you need not go into details on that.

Mr. KNIGHT: I want just general figures.

The WITNESS: Just ask that question again.

Mr. KNIGHT:

Q. What percentage of the gross earnings did it take for the operating expenses of the road in 1895?

A. I had so many of these roads it is hard to carry them in my mind, but I think it was about 61 per cent.—somewheres around there.

Q. Now, by equipping the road electrically what would be the percentage?

A. We hope to reduce it on the present traffic down to about 45 per cent.

Q. Making a saving of about 16 per cent.?

A. Yes, sir.

Recross-examination by Mr. BURRY:

Q. You stated that the condition was now clearly better. Has that been brought about by increased revenue in any degree?

A. Yes, sir; somewhat.

Q. Has it been brought about in any way by your receiving a large amount of money from the Union Elevated Street Railroad Company?

A. From what road?

Q. From the Union Elevated Company.

A. Its contracts with that company have materially advanced the interests of the Lake Street road; yes, sir.

622 Q. How much money have you received from it to bring about its better condition?

A. That question was objected to.

Mr. BURRY: I know, but they have opened the door now.

The COURT: Go on.

Q. (Question read.)

Mr. KNIGHT: That is assuming that that has brought about a better condition.

The COURT: That is assuming that money is always helpful.

A. My recollection is that up to the present time we have received about $181,000 from the Union Elevated.

Mr. BURRY:

Q. How much more is there to come under the same arrangement by which you got your $181,000?

A. $300,000, my recollection is.

Q. $300,000 more?

A. $300, my recollection is.

Q. Is that $480,000 that you have received and are to receive from the Union Loop Company the consideration of a grant to them of a right to use the Lake Street extension?

A. Yes, sir.

Q. For how long?

A. The life of the franchise.

Q. That is about twenty years?

A. Fifty.

Q. Fifty years? They don't pay that each year, do they; that is the consideration for the whole fifty years?

A. That is the entire cost of the construction of that portion of the road from 5th avenue to Wabash avenue.

Q. That is the way the amount was arrived at, was it?

623 You took the cost of the construction of that part of the road?

A. Construction and rights of way—absolutely everything that was extended.

Q. They to repay you what you had expended?

A. Yes, sir.

Q. Did you then return to the trustee any bonds that had been issued on account of that construction?

A. No, sir.

Q. There were introduced during your examination certain letters relating to the Humboldt Park extension. Has your company abandoned the building of that Humboldt Park extension?

A. Yes, sir.

Q. Is it trying to sell the right of way that it acquired when it thought it would build it?

A. It has some sales made predicated on the trustees releasing the mortgage and the money to be deposited with the trustees in the interest of the bondholders solely.

Q. (Paper shown witness.) Did you sign that letter?

A. Yes, sir; that is my signature.

Mr. Burry then offered and read in evidence the letter referred to as follows, to wit:

"CHICAGO, ILLINOIS, *Feb'y 22nd*, 1896.

William Burry, Esq., care of Runnells & Burry, The Temple, city.

624 DEAR SIR: You are hereby notified that the Lake Street Elevated Railroad Company will not recognize you as having any authority whatsoever to act on behalf of the Farmers' Loan & Trust Company under the mortgage of April 7th, 1893, running to the American Trust & Savings bank and the Farmers' Loan & Trust Company. We shall therefore discontinue any salary heretofore paid you.

Yours truly, LAKE STREET ELEVATED RAILROAD COMPANY,
By D. H. LOUDERBACK, *Pres't.*"

Q. Did your company receive any bonds issued under this trust deed for paying for the Humboldt Park extension right of way, which has now been abandoned?

A. Yes, sir.

Q. Did the company receive any consideration for abandoning the Humboldt Park extension from any person?

Mr. KNIGHT: That is objected to.

The COURT: He may answer.

A. No, sir.

Mr. BURRY:

Q. Did you receive any securities, bonds, stock, or anything of value from any corporation or person in consideration of giving up your Humboldt Park extension and allowing the Metropolitan Elevated Railroad Company to cross your road?

A. We decided to give up the Humboldt Park right of way long before we had anything to do with the Metropolitan.

Q. Well, did you receive anything from the Metropolitan
625 company as a consideration for abandoning it?

A. No, sir.

Q. Did you receive any considerable sum of money or securities from the Metropolitan road in connection with any dealing about the Humboldt Park extension?

Objected to. Objection overruled.

A. Yes, sir.

Q. What?

A. We received $5,000 adjudicated in the condemnation suit in the court——

Mr. KNIGHT: Haven't received that?

The WITNESS: Well, we were allowed it in the court; it is still in the hands of the court. We also received a further consideration from them.

Mr. KNIGHT: I object, your honor. It was not for abandoning the line or anything of that sort; it was a deal about the crossing. It is perfectly immaterial.

The COURT: It seems to me it can't be material. It is proper perhaps to ask him if the company was benefited by the abandonment of an enterprise which did not promise to be very successful—I judge from the other suit.

Mr. BURRY: He says they issued bonds on this extension. If he has received back a sum of money——

The COURT: What have you got from that, if anything?

A. Your honor, we got $100,000 and the bonds of the Metropolitan Company for that crossing. The money, received from those
626 bonds have been expended as part payment of the electrical construction and the betterment of the whole Lake Street elevated road, and the holding of that property up there is costing the Lake Street road at least $10,000 a year, simply the holding

of it, in taxes; also the—I was asked, your honor, in regard to whether the road was not bettered. The money received from the Union Elevated Railroad Company has also gone into the betterment of the Lake Street elevated road—building new barns, new stations, putting in new electrical motors, putting in electric cars, and putting in a third track from one end of the road to the other—something that I can safely state will save the bondholders in the operation of that road $10,000 a month at the least calculation.

Mr. BURRY:

Q. That is, if your judgment on the matter is good you would expect that?

A. Why, I believe it positively.

Q. You do believe it positively?

A. Yes, sir.

Q. You speak of a certain aggregate of bonds denominated Ziegler bonds. Do you know how many bonds Mr. Ziegler owned?

A. Nothing except in reading his papers here.

Q. He owns about $400,000, does he not?

A. I think that was what he offered to sell when he tried to make us pay 90 for them, cash.

Q. And you refused to pay 90?

A. We did, because he agreed to go into the sealing with us.

Mr. BURRY: I object; never mind your reasons, I simply
627 want the fact.

Q. And now no interest has been paid on those bonds; is that correct?

The COURT: That already appears.

Mr. BURRY:

Q. Do you know how many bonds the following people own, each: Samuel H. Harris, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Wooley, Oliver A. McMahon? Do you know any of those personally?

A. Not of my own knowledge, only that they served notice on us that they were the holders of that many bonds.

Q. Of certain numbers of bonds?

A. Yes, sir.

Mr. KNIGHT: You mean they served those on the trustees and the trustees sent you a copy of them?

A. Yes.

Q. Mr. Louderback, you spoke about Mr. Ziegler——

The COURT: How many men at the bat here; how many times around?

Mr. KNIGHT: Well, it is all matters that he called out that I want to ask him about.

The COURT: Go on.

Mr. KNIGHT:

Q. You spoke about Mr. Ziegler's agreeing to scale his bonds. Tell the facts about that.

Mr. BURRY: That is objected to.

Objection sustained.

Mr. KNIGHT: That is what they called out.

628 The COURT: No; they didn't call it out.

Mr. KNIGHT:

Q. Mr. Louderback, in regard to this Humboldt Park line, was the real estate acquired there?

A. Yes, sir.

Q. And that was acquired, some of it, since you was president of the road—treasurer of the road?

A. No; we purchased nothing after we came into control. We did fulfil some existing contracts that were made before we took it.

Q. How much was the total payments, in round numbers, for the Humboldt Park line?

A. I should say that that line cost pretty close to $400,000 cash.

Q. Have you applied to the trustees to release that real estate, so that you can sell it?

A. Yes, sir.

The COURT: That has been already stated.

Mr. MAYER: I would like the privilege of asking a question, your honor.

Q. Mr. Louderback, you have stated you signed the letter written February 22nd, 1896, to Mr. Burry discontinuing his relations with your company.

A. Yes, sir.

Q. Did you know that in 1894 the two trustees, the American Trust & Savings bank and the Farmers' Loan & Trust Company, had in writing appointed Mr. Burry their agent?

A. When I wrote this letter of February 22nd?

Q. Yes, sir.

A. I wasn't aware that the American Trust had done so. All of my information came from the Farmers' Loan & Trust.

629 Q. As a matter of fact, both of the trustees had in 1894 in writing appointed them their agent?

A. That was my understanding.

Q. Did you get the authority, knowledge, or consent of the American Trust & Savings bank or the Farmers' Loan & Trust Company to discontinue the relationship of agency between Mr. Burry and them?

A. No, sir.

Q. Did you do that with their knowledge or authority?

A. No, sir.

ARTHUR HEURTLEY, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Judah and testified as follows:

Q. What is your full name?
A. Arthur Heurtley.
Q. What is your business?
A. Secretary of the Northern Trust Company.
Q. What is your particular department over at the Northern Trust Company?
A. I have particular charge of the trust department.
Q. By the Northern Trust Company you mean the Northern Trust Company of Chicago, which is a defendant in this suit?
A. I do.
Q. Do you know what this suit is about?
A. I do.
Q. State briefly if you know what it is about.
630 A. I believe it is for the removal of the New York trustee and the appointment——
Q. Under what trust deed?
A. Under the trust deed dated the 7th day of April, 1893.
Q. Made by whom?
A. Made by the Lake Street Elevated Railroad Company to the American Trust & Savings Bank of Chicago and the Farmers' Loan & Trust Company of New York as trustees.
Q. Does the Northern Trust Company hold any of the bonds named in this trust deed you have just described?
A. It does.
Q. How many?
A. 6,595.
Q. How long has it held them—about how long?
A. Well, they have been deposited at different times, beginning in March, 1895.
Q. What coupons are attached to those 6,595 bonds you refer to?
A. The coupons due July 1st, 1895, and thereafter.
Q. And all following thereafter?
A. And all thereafter.
Q. Have any of these 6,595 bonds and their attached coupons been paid or cancelled?
A. They have not.

Mr. BURRY: I move to strike that out. That is a question of law whether they have been paid.

The COURT: You mean no money has been paid?
A. I mean no money has been paid, your honor. They have not been cancelled.
631 Mr. HERRICK: None of them have been cancelled?
A. No, sir.

Mr. JUDAH: Are you familiar with the contract under which those bonds and coupons referred to came to be held by the Northern Trust Company?
A. I am.
Q. Look at that instrument and see if it is a correct copy of the agreement.
A. It is.

Q. By whom was the original executed?

Mr. BURRY: I object. I want to see the original.

Mr. JUDAH: This is a perfect copy. Mr. Knight had it compared. I will have him bring it over if you wish.

Mr. BURRY: All right; go ahead.

Mr. JUDAH: How is the original executed?

A. It was executed by the Lake Street Elevated Railroad Company, by the Northern Trust Company, and approved by the attorneys constituting the bondholders' committee.

Q. Where is the original of this instrument?

A. It is in the hands of the Northern Trust Company, as trustee.

Thereupon solicitors for complainant offered and read said last-mentioned document in evidence as follows, to wit:

632 "*Instrument of Trust.*

In the Matter of the Bonds of THE LAKE STREET ELEVATED RAILROAD COMPANY.

CHICAGO, *March* 1, 1895.

Whereas, the Lake Street Elevated Railroad Company, a corporation under the laws of Illinois, has issued and disposed of its certain seven thousand four hundred and seventy-four (7,474) mortgage bonds, dated April 7, 1893, each for the sum of one thousand dollars ($1,000), payable in gold coin, with interest evidenced by coupons, payable half yearly, at the rate of five per cent. per annum, said bonds having been certified by the American Trust and Savings bank and the Farmers' Loan and Trust Company, trustee and cotrustee under the trust deed below named, and

Whereas, in order to secure the payment of the principal and interest of said bonds said The Lake Street Elevated Railroad Company did, under date of April 7, 1893, execute and deliver to the trustee and cotrustee above named its certain deed of trust, which is recorded in the recorder's office of Cook county, Illinois, in Book 4256 of Records, at page 230, *et seq.*, of which trust deed a copy is hereto attached and marked 'A,' and

633 Whereas, in pursuance of a certain plan for an adjustment between the holders of the bonds of said The Lake Street Elevated Railroad Company, issued and certified as aforesaid, and said railroad company, which is outlined in certain powers of attorney, under which John R. Walsh, George H. Webster, A. O. Slaughter, Anson B. Jenks and D. H. Louderback are the attorneys, copies of which are hereto attached for reference, and marked 'B 1' and 'B 2,' respectively, certain of the said seven thousand four hundred and seventy-four bonds of said The Lake Street Elevated Railroad Company are about to be deposited with the Northern Trust Company of Chicago, hereinafter called 'the trustee,' and

Whereas, said railroad company *was*, by written agreement, covenanted and agreed to do and cause to be done every act and thing necessary or proper on its part to carry out and perform said plan

of adjustment, a copy of which said contract is hereto attached for reference, and marked 'C,' and

Whereas, it is in the said plan of adjustment contemplated, and in the last-named agreement expressly provided that all the terms and provisions of the trust, upon which said The Northern Trust Company should act in the premises, should be fixed and reduced to certainty by an instrument of trust signed by said The Lake Street Elevated Railroad Company and said trust company, and to be approved by the bondholders' attorneys named and provided for in said powers of attorney,

634 Therefore, this instrument witnesses: That the trusts, terms and conditions upon which the undersigned, the Northern Trust Company is to and shall receive, hold, manage, and dispose of the said mortgage bonds, debentures and income bonds referred to herein and in said powers of attorney, with their respective coupons, and also the income-bond scrip below named, so far as the same shall come to its hands, are the following, and none other, viz:

1. The deposit of the respective mortgage bonds and coupons deposited hereunder by the respective holders thereof shall pass and transfer to said Northern Trust Company the full and complete title to such mortgage bonds and coupons, in trust, for the purposes hereinafter expressed, and pending the preparation of the debentures and income bonds and scrip below referred to, said trust company shall, if requested, for mortgage bonds respectively deposited, with all coupons maturing after January 1, 1895, attached, unless paid, issue temporary receipts which shall be in substantially the following form, viz:

Temporary Receipt.

Lake Street Elevated Railroad Company.

Received from —— —— this day — mortgage bond — of the Lake Street Elevated Railroad Company of Chicago, Illinois, for one thousand dollars ($1,000), each, dated April 7, 1893, with all
635 the interest coupons maturing after January 1, 1895, attached, said bond and coupons being deposited and to be held and disposed of under and in accordance with the instrument of trust dated March 1, 1895, executed by the undersigned and said railroad company.

If the plan of adjustment named in said instrument of trust becomes effective, and the debentures, income bonds and scrip are deposited with the undersigned, then the bearer hereof shall cancel and return this receipt, and receive therefor sixty per cent. (60 %) of the face value of the principal of said mortgage bond in the debentures and fifteen per cent. (15 %) of said face value in the income bonds or scrip as provided for in said instrument of trust; otherwise the bearer hereof will be entitled, on the return and can-

cellation of this receipt to receive back in like mortgage bonds and coupons the same amount as originally deposited hereunder.

Chicago, ——, 1895.

THE NORTHERN TRUST COMPANY,
By —— ——, *Its Secretary.*

2. Against, but not in satisfaction of every one thousand dollars ($1,000) of the principal of said mortgage bonds with all the interest coupons maturing after January 1, 1895, attached unless paid, which shall be deposited hereunder by the respective holders, said The Lake Street Elevated Railroad Company hereby agrees to
636 deposit with the trustee six hundred dollars ($600) in and of the gold debentures of said railroad company, with coupons attached for half-yearly interest at the rate of five per cent. per annum from January 1, 1895, and one hundred and fifty dollars ($150) in and of the income bonds of said railroad company, or script convertible therefor as hereinafter provided, which said debentures in denominations of five hundred dollars ($500) and one hundred dollars ($100) and interest coupons therewith shall be in substantially the forms therefor hereto attached and marked 'D,' and the said income bonds and coupons therewith and scrip shall be substantially in the forms therefor hereto attached and marked respectively 'E' and 'F.'

Said income bonds are to be in denominations of $500 and to meet the fractions which will arise where the mortgage bonds are not deposited in multiples allowing of the delivery on account of said fifteen per cent. of one or more income bonds, said The Lake Street Elevated Railroad Company shall, along with said debentures and income bonds, deposit with the trustee hereunder a sufficient number of the scrip certificates of said railroad company, in the form attached marked 'F,' blank as to the amounts, and for the said fractions, said trustee shall fill up and deliver to the depositors of said mortgage bonds in denominations of $50 and $100 and multiples of $100 such amounts of said scrip as shall be necessary to meet the fractions, issuing, however, no scrip except for
637 such necessary fractions, and upon the surrender to said trustee hereunder of each five hundred dollars ($500) of the par amount of such scrip said trustee shall deliver out in exchange therefor one of said income bonds with all the coupons for interest from January 1, 1895, attached, and shall cancel the scrip so taken up.

Before delivering out said debentures and income bonds hereunder said the trustees shall certify on the back of each substantially as follows:

This is to certify that within — is one of the — of the Lake Street Elevated Railroad Company issued under and in accordance with the instrument of trust dated March 1, 1895, executed by said railroad company and the undersigned.

——, ——,
By —— ——,
Its Secretary.

3. The Lake Street Elevated Railroad Company hereby covenants and agrees that it will cause each of its said debentures to be guaranteed in writing, on the back thereof, and for a valid consideration, by the Northwestern Elevated Railroad Company, in substantially the following form, viz :

For value received, the Northwestern Elevated Railroad Company hereby guarantees the punctual payment of the principal and interest of the within undertaking of the Lake Street Elevated
638 Railroad Company, at the time and in the manner therein specified, and covenants in default of payment of any part thereof by the obligor, to pay the said principal and interest of the within undertaking as the same shall become due, upon the demand of the holder thereof.

In witness whereof the said The Northwestern Elevated Railroad Company has caused its corporate name and seal to be hereto set by its authorized officers.

—— ——,
By —— ——,
Its President.

Attest: —— ——, *Secretary.*

4. This instrument shall become non-effective if thirty-eight hundred (3,800) of said 7,474 mortgage bonds are not deposited with said the trustees hereunder on or before April 1, 1895, or within such further time as the attorneys provided for in said powers of attorney, their co-attorneys and successors under the provisions of said powers of attorney, of which copies are hereto attached may fix and allow in accordance with section twelve of said powers, and if this instrument shall become non-effective, or if said Northwestern Elevated Railroad Company shall fail to guarantee said debentures as aforesaid, then or in either of said cases, the trustee shall return to the respective holders of its respective receipts the mortgage bonds and coupons represented thereby upon the cancellation and return of said respective receipts, and the trust shall be
639 at end.

5. If this instrument becomes effective by the deposit of the number of mortgage bonds in section 4 above named, within the time and times therein provided for, and said debentures, income bonds and scrip named in section 2 above are likewise deposited with the trustee, then said trustee shall deliver out, for and upon return and cancellation of its temporary receipts and upon mortgage bonds thereafter deposited under the provisions hereof six hundred dollars ($600) par in said debentures, and fifteen per cent. (15 %) of the par amount of the mortgage bonds deposited in the income bonds with their respective interest coupons attached, or scrip, as provided for in section 2 above, against (but not in satisfaction of) each one of said one-thousand-dollar mortgage bonds, with all coupons due after January 1, 1895, attached, unless paid deposited hereunder.

6. The mortgage bonds and coupons so deposited hereunder and the lien of said trust deed to said Farmers' Loan and Trust Com-

pany and said American Trust and Savings bank securing said mortgage bonds shall remain in full life and force to the full extent of the face of the principal and interest of said mortgage bonds until such time as all of the debentures delivered out by the trustee hereunder with all interest thereon shall either have been paid and discharged or all of said debentures and their unpaid interest
640 coupons shall have been surrendered to said the trustee for cancellation and exchange for an amount of said mortgage bonds equalling the principal of the debentures, under the alternative hereinafter provided, and while said mortgage bonds and interest coupons so remain in full force and title thereto shall be in said the trustee, in gross and not severally, for the equal benefit in proportion to their holdings of those persons and corporations who from time to time shall be the legal holders of the said debentures of said The Lake Street Elevated Railroad Company which shall be certified by said trustee and delivered out by it under the provisions hereof; that is to say, immediately upon the certification and delivery out by the trustee of said debentures, the respective legal holders from time to time shall be entitled to share in the whole security afforded by the whole deposit of bonds in the hands of the trustee in proportion to their respective holdings of debentures, and the original depositors of the mortgage bonds and past holders of the debentures shall not, as such, have any further interest in the bonds deposited, the *pro rata* equitable ownership of the mortgage bonds to follow the ownership of the debentures.

And for sake of clearness it is here stated that said income bonds and scrip therefor have no relation to or share in the security furnished by said mortgage bonds deposited with the trustee.

641 7. If at any time after this instrument has become effective a majority of the attorneys then acting under said powers of attorney shall decide that a foreclosure of the said trust deed securing said mortgage bonds is for the best interest of the parties beneficially interest- hereunder, then said trustee is authorized and empowered, under the direction of said attorneys, or a majority of them, to proceed to cause said trust deed to be foreclosed in such lawful manner as the trustee, as holder of said mortgage bonds, may be entitled to insist upon, and at any foreclosure sale under said trust deed the trustee may, under the direction of said attorneys, or a majority of them, become a bidder for the property to be sold, using the mortgage bonds in payment, and if successful as such bidder, it shall then hold the property bought in trust for the benefit, in proportion to their holdings, of the persons and corporations holding said debentures certified by it hereunder, and if it should not be the successful bidder, then all the proceeds coming from such foreclosure sale to the trustee as holder of said mortgage bonds shall be divided and go forth within full to the legal holders of said debentures in proportion to their holdings of debentures, not simply to the amounts due on the debentures, but to a full division of the whole amount received by the trustee, it being the express agreement and intent hereof that in case of foreclosure the debenture-holders shall receive and have the full benefit of the

642 mortgage bonds up to their full face and interest, the debentures in such case to be credited with the amounts received as and when their holders so receive, respectively, their full *pro rata* share of the product of foreclosure sale.

8. If at any time hereafter all said 7,474 mortgage bonds issued and certified under said trust deed of said The Lake Street Elevated Railroad Company shall, prior to foreclosure decree, be deposited hereunder, and if said The Northwestern Elevated Railroad Company shall guarantee in writing the payment of sixty per cent. of said bonds and the interest thereafter to accrue on said sixty per cent., then and in that case, and not before, said The Northern Trust Company may cancel the remaining forty (40) per cent. of said mortgage bonds, with their attached interest coupons, and in such case the holders of said debentures shall cancel and deliver to the said trust company, trustee hereunder, their respective debentures with all coupons for future interest attached, and shall take and receive in lieu thereof, at par, and in equal exchange, a like amount of said mortgage bonds, interest to be adjusted at the time of the exchange, and the debentures to be tendered in the proper multiples for the exchange.

9. Any holder of any of said 7,474 mortgage bonds may, if this instrument becomes effective by deposit of the 3,800 bonds within the time or times hereinabove provided for, deposit his bonds
643 hereunder and become entitled to the benefits hereof, subject to the provisions of said powers of attorney and of this instrument, provided he shall make such deposit within thirty (30) days after this instrument has become effective by said deposit of 3,800 bonds, or within such further time as may be allowed and fixed therefor by the attorneys provided for in said powers of attorney by a written notice of extension delivered by said attorneys to said The Northern Trust Company.

10. The Northern Trust Company, as trustee hereunder, shall be responsible only for reasonable diligence in the performance of the trusts hereunder, and shall be entitled to be reimbursed all proper outlays of every sort incurred by it in discharge of or in relation to its trusts hereunder, including all reasonable attorneys' fees to which it may be subjected by reason of being party hereto, also to receive reasonable and fair compensation from time to time for all its services hereunder, all of which fees, compensation and disbursements said The Lake Street Elevated Railroad Company hereby assumes and agrees to pay and discharge, and in default of such payment by the said Lake Street Elevated Railroad Company all such fees, compensation and disbursements shall be a charge ratably against the property held in trust hereunder and the proceeds, and it is expressly agreed and made a condition hereof that the trustee hereunder need not take any steps hereunder or enter
644 upon any litigation in relation hereto, or connected with the trusts hereof, which in the trustee's judgment may subject it to costs, expenses or liabilities unless the beneficiaries hereunder shall first indemnify said trustee to its satisfaction against such costs, expenses or liabilities. The trustee hereunder shall not be

taken to be obligated to perform or to compel the performance of any of the steps hereby contemplated to be performed by others than itself.

11. If at any time after this instrument becomes effective, and prior to a foreclosure sale decree under said trust deed, any person or corporation shall deliver to the trustee hereunder, cancelled and discharged, all of the said debentures which may be certified and delivered out hereunder with all their unpaid coupons therewith also cancelled, then said The Northern Trust Company shall deliver to such person or corporation all the said mortgage bonds deposited hereunder with their respective unpaid coupons held by it, provided, however, that all income bonds issued and certified hereunder with their interest coupons then outstanding shall first, either be surrendered and cancelled, or their payment secured in a way and manner and to an extent satisfactory to said The Northern Trust Company and the attorneys then acting under said powers of attorney, and in such case, upon payment of all the compensation fees and disbursements due said trustee hereunder, this trust shall be at end.

645 12. The undersigned the Lake Street Elevated Railroad Company hereby covenants and agrees to and with the trustee hereunder, and to and with the holders of the income bonds certified and issued hereunder, that it will not hereafter make any lease of its railroad property and franchises which does not provide for the prompt payment of the interest to become due upon all the debentures certified and issued hereunder, as well as five (5) per cent. per annum, on the income bonds without regard to the actual income.

In witness whereof the undersigned, the Northern Trust Company and the Lake Street Elevated Railroad Company, have hereunto caused their corporate names and seals to be set by their authorized officers this first day of March, 1895.

THE LAKE STREET ELEVATED
RAILROAD COMPANY,
By D. H. LOUDERBACK, *President.*

[SEAL.]
Attest: R. LAUGHLIN, *Secretary.*

THE NORTHERN TRUST COMPANY,
By BYRON L. SMITH, *President.*

[SEAL.]
Attest: ARTHUR HEURTLEY, *Secretary.*

The foregoing instrument of trust is hereby approved.

GEO. H. WEBSTER,
JOHN R. WALSH,
A. O. SLAUGHTER,
ANSON B. JENKS,
D. H. LOUDERBACK,
Attorneys Constituting Bondholders' Committee."

646 Q. Do you remember about an instrument addressed by the Northern Trust Company to the two trustees under this trust deed, being made up about October 15th, 1895?

A. I do.

Q. Look at that and see if it is a correct copy.

A. It is a correct copy.

Thereupon solicitors for complainant offered and read said last-mentioned document in evidence, as follows, to wit:

"CHICAGO, *October* 15, 1895.

To the American Trust and Savings Bank of Chicago, Illinois, and the Farmers' Loan and Trust Company of New York City, trustees in and under the trust deed of the Lake Street Elevated Railroad Company, dated April 7th, A. D. 1893:

The undersigned, the Northern Trust Company of Chicago, is the trustee under a certain instrument of trust relating to an adjustment of the bonded indebtedness of said elevated railroad company under said trust deed of April 7, 1893, and there have up to this date been deposited with the undersigned as such trustee under said adjustment agreement sixty-five hundred and sixty-eight (6,568) of the mortgage bonds for $1,000 each, named in and covered by said trust deed of April 7, 1893. Each of the said 6,568 $1,000 bonds, except five (5), has attached to it the interest coupon which matured on July 1, 1895, and all of said 6,568 bonds,
647 with all their coupons, except said five (5) coupons, maturing on and after July 1, 1895, attached, are now in the possession of the undersigned as trustee, as aforesaid, and are unpaid and undischarged.

Collateral trust debentures have been issued by said Lake Street Elevated Railroad Company, based upon the above-mentioned 6,568 bonds and coupons deposited with the undersigned, and all interest matured upon said collateral trust debentures outstanding has been promptly paid, and no depositor of any of said bonds nor any holder of any of said collateral trust debentures nor the committee of adjustment, viz., John R. Walsh, A. O. Slaughter, George H. Webster, A. B. Jenks, and D. H. Louderback, have asked or requested undersigned that any action be taken upon any of said deposited bonds or on account of any of the interest coupons thereto attached, and the undersigned therefore does not at this time desire that any action be taken by the trustees under said trust deed of April 7, 1893, looking to taking possession or foreclosure.

THE NORTHERN TRUST COMPANY,
By BYRON L. SMITH,
[CORPORATE SEAL] *Its President.*

Attest: ARTHUR HEURTLEY, *Secretary.*"

648 Q. Is it not a fact that a large part of those 6,595 bonds to which you have referred have been held by the Northern Trust Company since prior to April, 1895?

A. It is.

Q. Has the Northern Trust Company ever asked or requested the Farmers' Loan & Trust Company or the American Trust & Savings bank to proceed to foreclose this trust deed?

A. It has not.

Q. Has it ever asked them to take any steps towards enforcing the lien of the trust deed?

A. It has not.

(Cross-examination waived.)

MICHAEL C. MCDONALD, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Knight and testified as follows:

Q. What is your name?

A. Michael C. McDonald.

Q. Do you reside in the city of Chicago?

A. Yes, sir.

Q. How long have you resided here?

A. Forty-one years.

Q. Do you know the railroad of the Lake Street Elevated Railroad Company?

A. Yes, sir.

Q. Do you know the Lake Street Elevated Railway Company?

A. Both of them, sir.

Q. Were you an officer of the Lake Street Elevated Railway Company?

A. I was treasurer for four years.

Q. There has been a trust deed introduced in evidence in
649 this case from the Lake Street Elevated Railway Company to the American Trust & Savings bank and the Farmers' Loan & Trust Company. Do you remember the time of the execution of that instrument?

A. I made the arrangement with one of the parties to it—with the Farmers' Loan & Trust Company of New York.

Q. What arrangement did you make with them?

Mr. BURRY: I object. It is prior to the execution and delivery of the trust deed we all agree upon. Next, there is nothing in the bill attacking in any proceeding the execution of the trust deed, and our witnesses, if he is going to state what took place with us, are all in New York.

Mr. KNIGHT: It is only to show the doing of the business.

The COURT: In that case it would be proper; go on. I will hear you (Mr. Burry) if there is any objection. You had better ask him directly what you want.

Mr. KNIGHT: What did they do under the trust deed—did they accept it?

A. They did; yes, sir.

Q. What did they do under that trust deed?

A. They received the three millions in bonds that were issued and returned them to us on vouchers that they had received for

work done on the elevated railroad. As we done work on the engineers' certificates, we withdrew the bonds from the Farmers' Loan & Trust Company through the American Company here—their representative here—their assistant here—Mr. Shaw's bank.

Q. Were the bonds certified to by the Farmers' Loan &
650 Trust Company?

A. Yes, sir; and they was all sent to the Farmers' Loan & Trust Company. There was 3,000 of them—a thousand dollars apiece.

Q. Were they paid for that—did you pay them for that?

A. Paid them a dollar for each bond—50 cents at that end of the road and 50 cents at this.

Q. That is, 50 cents to the Farmers' Loan & Trust Company?

A. Yes, sir.

Q. And 50 cents to the American Trust & Savings bank?

A. Yes, sir.

Q. Do you remember when the mortgage was made by the Lake Street Elevated Railroad Company, in April, 1893?

A. Yes, sir.

Q. At that time how much of the road was built?

Objected to by Mr. Burry. Objection overruled.

A. It was built from Canal street to Sheldon. Sheldon is about two blocks this side of Ashland avenue.

Q. About how far is that?

A. Well, it is about a mile and five-eighths.

Q. When was the rest of the road completed—since that time—since April 7th, 1893?

A. Yes; April 7th, I think it was, 1893.

Q. That was the date of the mortgage. It was completed since that time?

A. Yes, sir.

Q. And is now in operation?

A. Yes, sir.

Q. Were you the owner or holder of any of the bonds
651 issued by the Lake Street Elevated Railroad Company under the mortgage of April 7th, 1893?

Objected to by solicitors for defendant The Farmers' Loan & Trust Company as immaterial.

The COURT: I don't see how it is material.

Mr. KNIGHT: Simply to show that he as one of the bondholders desired that the trustee should be removed.

Mr. BURRY: I will withdraw the objection.

The COURT: You may answer.

A. I represented $1,100,000 in Lake Street bonds; five hundred and fifty-four thousand was my own; the others belonged to other parties that I represented.

Mr. KNIGHT: Do you know what this suit is about?

A. Only what I have learned since coming into court here; that is all.

Q. It is brought to remove the Farmers' Loan & Trust Company.
A. To remove the Farmers' Loan & Trust Company, as I understand it, because they have not filed a proper bond in the State of Illinois to do business; that is what I understood since I come in here.
Q. And filing a bill to foreclose?
A. Something; I don't know what.
Q. Have you formed any judgment as to what your wishes or desires are in that respect; to have the Farmers' Loan & Trust Company continue as trustee in that mortgage?
A. I don't think they would be the proper persons the
652 way they have been acting lately. I think it would be detrimental to the interests of the road.
Q. Did you deposit your bonds under this scaling arrangement?
A. Yes, sir.

Cross-examination.

By Mr. BURRY:

Q. Are these bonds you now own held by the Northern Trust Company under this scaling agreement?
A. They are not held by them; no, sir; not my own.
Q. Where are they?
A. There are certificates issued to different parties for part of the bonds. I have certificates for them or receipts.
Q. The bonds themselves; did you deposit them with the Northern Trust Company?
A. Yes, sir.
Q. They hold them under the scaling arrangement?
A. Yes, sir.
Q. And you got receipts for the bonds, did you?
A. Got certificates.
Q. Or did you get debentures?
A. Yes, sir.
Q. Which did you get?
A. I got debentures.
Q. To the amount of 60 per cent. of the face of the bonds; is that it?
A. That is right, sir, and a 15 per cent. income bond.
Q. In addition?
A. Yes, sir.
Q. Are those debentures now upon the market? Have
653 you sold any of yours?
A. No, sir; I have not sold any of mine.
Q. Do you know of any sales of them taking place?
A. I don't never deal in the stock market in any way, shape, or manner.
Q. Do you know of any sales of these debentures being made by anybody?
A. I haven't dealt in any of them at all except in my own.

Q. Do you know of any person having sold any of their debentures that they got from the Northern Trust Company?

A. I don't know any more than what I would see copied in the papers, the same as anybody else. That is not knowledge of mine; it is only what I see. I don't know of my own knowledge; no, sir.

Q. When this mortgage was made in April, 1893, were you present when it was executed and signed?

A. Yes, sir.

Q. Were you present when that was signed?

A. I would not wonder but what I was.

Q. Were you a director in the company that issued this large mortgage?

A. I was a director and treasurer in the other company, and we turned them over.

Q. Were you a director in the new company?

A. No, sir; I was not.

Q. Were you present when the new company made this present mortgage?

A. I don't know that I was present in person.

Q. Did you pay the Farmers' Loan & Trust Company or the American Trust Company anything for certifying these new
654 bonds?

Mr. KNIGHT: That is already in proof.

A I was not treasurer then.

Mr. BURRY: Then you did not pay them anything?

A. Not when I was not treasurer I did not.

Q. When you said a little while ago you paid them something like 50 cents you referred to the old bonds, did you, that were taken up?

A. I referred to the first three million bonds; yes, sir.

Q. That was under the old mortgage?

A. Under the first mortgage we had with the Farmers' Loan & Trust Company and this bank here.

Q. And that was the mortgage that was cancelled, and this new larger one was made afterwards?

A. The mortgage was increased from three millions to six million five hundred thousand by the new company.

Q. Where were the bonds you have referred to delivered to the Farmers' Loan & Trust Company? Did you express them to them in New York?

A. Which ones?

Q. These latter bonds we are talking about now.

A. You just come to the conclusion yourself. I didn't have anything to do with the new bonds. How did I come to express them to New York?

Q. Do you know how they were sent to the Farmers' Loan & Trust Company?

A. I had nothing to do with them, with the new company.

655 Q. Then your testimony all relates——

The COURT: That appears. What is the use of debating that?

Mr. BURRY: When you delivered those old bonds to the Farmers' Loan & Trust Company, the first issue, how did you deliver them; send them by express?

A. I should think that was the way it was done. I ordered it done through some of the other officers of the company.

Q. And when you received them back from the Farmers' Loan & Trust Company did they usually come to you by express?

A. After I had sent them on as treasurer I sent them to the Farmers' Loan & Trust Company in New York.

The COURT: He asks you how you got them back. Did they come by express?

A. They come by express; yes, sir.

W. P. KOPF, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Knight and testified as follows:

Q. What is your name?
A. W. P. Kopf.
Q. What is your business?
A. Assistant secretary of the American Trust & Savings bank.
Q. Where is your place of business?
A. 132 La Salle.
Q. In the city of Chicago?
A. Yes, sir.
Q. What is this document which I now hand to you?

A. It is a trust deed given by the Lake Street Elevated
656 Railroad Company to the American Trust & Savings bank and the Farmers' Loan & Trust Company.

Q. That is the original, is it not?
A. Yes, sir.

Solicitors for complainant thereupon offered said trust deed in evidence and asked leave to withdraw it and substitute a copy.

Mr. BURRY: I object. A copy is attached to the bill and admitted by the answer. I do not want to duplicate the record.

The COURT: Your point is well taken.

Mr. KNIGHT: Mr. Shaw is the president of the bank, is he not?
A. Yes, sir.
Q. Where is he today?
A. He is out of town today.
Q. And you have the custody of the papers pertaining to the trusteeship of this mortgage to which you refer?
A. Yes, sir.
Q. I will ask you by whom was this document signed which I hand you.
A. William Burry.
Q. That is to whom?

A. To the American Trust & Savings bank and the Farmers' Loan & Trust Company.

Solicitors for complainant thereupon offered in evidence a letter dated April 28th, 1895, to the American Trust & Savings bank and the Farmers' Loan & Trust Company signed by William Burry.

Mr. BURRY: I object to it as incompetent, not being to or from the complainant.

657 The COURT: What is it?

Mr. KNIGHT: It is from Mr. Burry to the trustee in relation to the transfer and the issue of additional bonds under this mortgage—his direction to the trustee what to do.

The COURT: It may go in.

Said last-mentioned paper is marked Exhibit Kopf A, and was thereupon read in evidence by counsel for complainant, and is as follows, to wit:

"APRIL 20TH, 1895.

The American Trust & Savings bank and the Farmers' Loan & Trust Co.

GENTLEMEN: Having been appointed agent under the provisions of the 'second clause of the covenants of the mortgage of the Lake Street Elevated Railroad Company to examine into the application and expenditures of bonds issued under that mortgage in excess of 6,500 bonds,' I now make this report to you:

I examined the record book of the company in so far as it relates to the issue of bonds additional to the 6,500 bonds, and was present at the directors' meeting on August 3rd, 1894, which passed a resolution requesting you to issue 871 bonds. The purposes for which the bonds were requested were as follows:

a. Damages to Catholic church, Humboldt Park extension	$10,000.00
b. Damages to Jones and others, main line	35,000.00
c. For right of way, main line	80,103.44
d. Right of way, &c., Cicero extension	16,000.00
658 *e.* Right of way and real estate, Humboldt Park extension	499,814.00
f. Right of way, Market St. from Lake St. to Wabash Ave	156,181.00
g. Right of way and surveying Halsted St. line	15,000.00
h. Right of way and surveying North Side line	15,000.00
i. Interest not paid by earnings	44,050.00
Total	$871,148.44

Under this call for bonds you issued 871 bonds. 41 of them were issued directly to creditors at par in settlement of their claims, being 16 bonds to Jones and Laflin, 10 bonds to the estate of J. Wadsworth, and 15 bonds to W. L. De Lacey and Willard R. Green. The other bonds were sold at an average of about 51¼ cts., and the total amount realized, counting the bonds issued at par as realizing

par, was $468,612.98. I have seen the original reports of sale by the treasurer and the original books of entry showing the receipt of these moneys and bonds by the company.

I have also examined the books of the company showing disbursements made in connection with the purposes for which these bonds were issued and to which the proceeds of the bonds were applied, and also the vouchers evidencing the payments, and find that there was paid for those purposes as follows:

a	$10,000.00
b	56,610.61
c	80,103.44
d	16,281.60
e	274,413.51
f	156,181.00
g	15,000.00
h	15,000.00
i	44,050.00
	$667,638.16

659 Vouchers for all these disbursements have been examined by me, except one item of $5,000 expended for legal services in connection with *quo warranto* litigation. From my investigation of the matter I am satisfied that this disbursement was made.

Large amounts included in *a*, *c*, *e*, *f*, *g*, and *h* were paid to Messrs. Underwood and Green without detailed vouchers, and under the general description of expenses and payments in securing right of way, etc. The amounts so paid them are as follows:

Included in *a*	$3,872.10
Included in *c*	72,086.49
Included in *e*	50,000.00
Included in *f*	121,238.50
Included in *g*	12,912.79
Included in *h*	9,297.50
	$269,407.38

The item *c* was afterwards increased by $29,600.30 paid Underwood and Green on a like voucher.

By another resolution passed by the company on Aug. 3, 1894, you were called upon to issue 348 additional bonds to be used in acquiring right of way, etc., on Lake street from Market street to Wabash avenue. There was considerable correspondence and consultation about the issue of these bonds, which resulted in the issue by you of only 103 bonds instead of 348. Of these 103 there have been paid out and delivered for right of way and services in acquiring the same 71, and vouchers therefor have been examined
660 by me and found correct. The other 32 bonds still remain in the possession of the treasurer of the company, to be delivered hereafter to meet the contracts on account of which they were

issued, and they are now held by the treasurer for the following persons:

Kerfoot, Bruner and Sheppard, one bond; J. D. Wallace (for S. L. Williams), one bond; A. H. Burley, two bonds; J. C. Simm, one bond; F. K. Maus, fifteen bonds; G. C. Bailey, two bonds; Dr. Ingalls, four bonds; E. B. Meyers, one bond; A. C. Thompson, two bonds; C. G. Wheeler, two bonds, and Holden and Buzzell, one bond.

As you are aware, the city council passed an ordinance based upon the petition to obtain which these bonds were issued, granting the company the right to use Lake street from Market to Wabash avenue. The Elevated R. R. Co. has placed foundations in the street, but no superstructure has yet been erected. There is some litigation pending concerning the use of the street for that purpose.

If there is anything further in this matter that I can do for you I will be glad to attend to it.

Very respectfully submitted.

WM. BURRY."

Mr. KNIGHT: I show you these six documents and ask you what they are—as trustee under this mortgage did you receive any request from any of the bondholders or purported bondholders to take action under the same in the month of July, 1895?

661 A. Yes, sir; we received some such requests from some eastern bondholders.

Q. Have you those requests with you now?

A. Yes, sir; I have them here.

Q. Were any requests received excepting those?

A. I don't think so, although I don't remember what we received. There were three or four of them.

Q. Haven't you searched your records to ascertain?

A. Yes, sir. We have none on hand now; they were all delivered to counsel.

Q. I mean the July requests; I don't mean October.

A. Yes, sir; these appear to be all that we had. Yes, sir; that is all of them.

Solicitors for complainant thereupon offered said requests in evidence.

Q. After receiving those did you communicate with Mr. Burry in regard to them?

A. Yes, sir; I advised Mr. Burry I had received such requests.

Q. Did you receive any reply from him?

A. Yes, sir; I have his reply here.

Q. Is that his reply (handing paper to witness)?

A. Yes, sir.

Q. Signed by Burry, addressed to the American Trust & Savings bank, July 26th, 1895?

Thereupon solicitor for complainant offered and read said
662 last-mentioned letter in evidence as follows, to wit:

"CHICAGO, *July 26th*, 1895.

American Trust & Savings bank, corner of Madison & La Salle St., city.

GENTLEMEN: Your favor of 24th instant relating to receipt of requests from William Ziegler and others, addressed to the trustees of the first-mortgage bonds of the Lake Street Elevated Railroad Company, was duly received. I will advise the Farmers' Loan & Trust Company, and as soon as I hear from them will communicate with you further.

Very truly yours, WILLIAM BURRY."

Mr. KNIGHT: I now offer in evidence the requests referred to be the witness made by the various bondholders, consisting of six, marked respectively Exhibit Kopf B, C, D, E, F, and K.

Thereupon said last-mentioned requests were read in evidence by counsel for complainant and are respectively as follows, to wit:

EXHIBIT KOPF B.

"To the American Trust & Savings Bank of Chicago, Illinois, trustee, and the Farmers' Loan & Trust Company of the City of New York, cotrustee under the trust deed from the Lake Street Elevated Railroad Company of Chicago, Illinois, dated April 7, 1893, and filed for record in the recorder's office of Cook
663 county, Ill., May 6, 1893, and recorded in Book 4256 of Records, at page 230, and also recorded in the office of the secretary of state of the State of Illinois, at Springfield, Ill., May 23, 1893, and given to secure certain first-mortgage gold bonds of the denomination of $1,000 each, as therein recited, and to said The Lake Street Elevated Railroad Company, maker of said trust deed and the bonds secured thereby and the interest coupons attached to said bonds, maturing respectively on the first day of January and July of each year until the maturity of said bonds:

As owner of fifty of said bonds, numbers 6312 to 41, inc., & s178 to 97, inc., and the interest coupons attached thereto, I did on the 22nd of July, 1895, present for payment to the Farmers' Loan & Trust Company aforesaid, at its regular place of business in said New York city, all the interest coupons attached to said bonds and each and every of them which matured and became due on, to wit, July 1, 1895, and payment was refused for want of funds wherewith to pay the same.

I am informed the Lake Street Elevated Railroad Company has entered upon some plan to take up and cancel the bonds secured by said trust deed and in lieu and substitution thereof to issue to the holders thereof other so-called debenture bonds at the rate of only sixty per cent. (60%) of said original gold mortgage bonds, secured by said trust deed, and said The Lake Street Elevated
664 Railroad Company has given out that it has secured the consent of holders of over $6,000,000 par value of said mortgage bonds to surrender their original bonds and to accept in lieu

and substitution sixty per cent. (60%) thereof in said new debenture bonds guaranteed or secured in some way by a corporation designated the Northwestern Elevated Railroad Company of Chicago, Illinois.

Further, that the directors of said The Lake Street Elevated Railroad Company, in excess of their powers and in fraud of the rights of said original mortgage bondholders, have passed some resolution impairing or tending to impair the conditions of said trust deed and render it inoperative in some of its provisions, and that said directors have passed some resolution to the effect that the earnings of said The Lake Street Elevated Railroad Company should be used in paying interest on said new debenture bonds to the exclusion of paying interest on said original mortgage bonds, which is in fraud of the rights of the undersigned as an owner of a part of said original bonds.

I call your attention to the provisions of the trust deed or mortgage securing the bonds which I hold and own, and which states specifically that the property rights, etc., of the Lake Street Elevated Railroad Company are held by the trustees under said trust deed 'for the equal *pro rata* use, benefit, and security of each and all and every the persons or corporations who may be or become holders of any of the above-mentioned original mortgage
665 bonds without any preference or priority of any one bond over another by reason of priority or otherwise.'

I respectfully request, therefore, that the Lake Street Elevated Railroad Company inform me if any of the funds of said company have been, in violation of the trust agreement, used for the purpose of paying interest on the aforesaid debenture bonds.

I respectfully request the Farmers' Loan & Trust Company and the American Trust & Savings bank, trustees, to examine the books of account of the Lake Street Elevated Railroad Company and ascertain what have been the net earnings of said railroad company for the past six months and what disposition has been made thereof, and if it be found there has been any unlawful use or diversion of said net earnings to the payment of interest on debenture bonds not known to the trust deed, I call upon said trustees to take such action as will nullify the wrong done and punish the wrong-doers.

W. M. VAN ANDE,
65 *Pierrepont St., Brooklyn, N. Y.*"

"EXHIBIT KOPF C.

To the American Trust & Savings Bank of Chicago, Illinois, trustee, and the Farmers' Loan & Trust Company of the City of New York, cotrustee under the trust deed from the Lake Street Elevated Railroad Company of Chicago, Illinois, dated April 7,
666 1893, and filed for record in the recorder's office of Cook county, Ill., May 6, 1893, and recorded in Book 4256 of Records, at page 230, and also recorded in the office of the secretary of state of the State of Ill., at Springfield, Ill., May 23, 1893, and given to secure certain first-mortgage gold bonds of the denomination of $1,000 each, as therein recited, and to said The Lake Street Elevated Railroad Company, maker of said trust deed and the bonds secured thereby and the interest coupons attached to said bonds, maturing respectively on the first day of January and July of each year until the maturity of said bonds:

As owner of 55 of said bonds and the interest coupons attached thereto, I did, on July 16, 1895, present for payment to the Farmers' Loan & Trust Company aforesaid, at its regular place of business in said New York city, all the interest coupons attached to said bonds, and each and every of them, which matured and became due on, to wit, July 1, 1895, and payment was refused for want of funds wherewith to pay the same.

I am informed the Lake Street Elevated Railroad Company has entered upon some plan to take up and cancel the bonds secured by said trust deed and in lieu and substitution thereof to issue to the holders thereof other so-called debenture bonds, at the rate of only sixty per cent. (60 %) of said original gold mortgage bonds, secured by said trust deed, and said The Lake Street Elevated Rail-
667 road Company has given out that it has secured the consent of holders of over $6,000,000 par value of said mortgage bonds to surrender their original bonds and to accept in lieu and substitution sixty per cent. (60 %) thereof in said new debenture bonds, guaranteed or secured in some way by a corporation designated the Northwestern Elevated Railroad Company of Chicago, Illinois.

Further, that the directors of said The Lake Street Elevated Railroad Company, in excess of their powers and in fraud of the rights of said original mortgage bondholders, have passed some resolution impairing or tending to impair the conditions of said trust deed and render it inoperative in some of its provisions, and that said directors have passed some resolution to the effect that the earnings of the said The Lake Street Elevated Railroad Company should be used in paying interest on said new debenture bonds to the exclusion of paying interest on said original bonds, which is in fraud of the rights of the undersigned as an owner of a part of said original bonds.

I call your attention to the provisions of the trust deed or mortgage securing the bonds which I hold and own and which states specifically that the property rights, etc., of the Lake Street Ele-

vated Railroad Company are held by the trustees under the said trust deed 'for the equal *pro rata* use, benefit, and security of each and all and every the persons or corporations who may be or
668 become holders of any of the above-mentioned original mortgage bonds without any preference or priority of any one bond over another by reason of priority or otherwise.'

I respectfully request, therefore, that the Lake Street Elevated Railroad Company inform me if any of the funds of said company have been, in violation of the trust agreement, used for the purpose of paying interest on the aforesaid debenture bonds.

I respectfully request the Farmers' Loan & Trust Company and the American Trust & Savings bank, trustees, to examine the books of account of the Lake Street Elevated Railroad Company and ascertain what have been the net earnings of said railroad company for the past six months and what disposition has been made thereof, and if it be found there has been any unlawful use or diversion of said net earnings to the payment of interest on debenture bonds not known to the trust deed, I call upon said trustees to take such action as will nullify the wrong done and punish the wrong-doers.

Dated 47 Cedar St., New York, July 16, 1895.

EFFINGHAM H. NICHOLS."

"EXHIBIT KOPF D.

46 CEDAR ST., NEW YORK, *July* 12, 1895.

To the American Trust & Savings Bank of Chicago, Illinois, trustees, and the Farmers' Loan & Trust Company of the City of New York, cotrustees under the trust deed from the Lake Street
669 Elevated Railroad Company of Chicago, Illinois, dated April 7, 1893, and filed for record in the recorder's office of Cook county, Ill., May 6, 1893, and recorded in Book 4256 of Records, at page 230, and also recorded in the office of the secretary of state of the State of Illinois, at Springfield, Ill., May 23, 1895, and given to secure certain first-mortgage gold bonds of the denomination of $1,000 each, as therein recited, and to said The Lake Street Elevated Railroad Company, maker of said trust deed and the bonds secured thereby, and the interest coupons attached to said bonds, maturing respectively on the first day of January and July of each year until the maturity of said bonds:

As owner of 392 of said bonds (numbers will be given if required) and the interest coupons attached thereto, I did, on January 3, 1895, present for payment to the Farmers' Loan & Trust Company, aforesaid, at its regular place of business in said New York city, all the interest coupons attached to said bonds and each and every of them which matured and became due on, to wit, January 1, 1895, and payment was refused for want of funds wherewith to pay the same.

On July 1st, 1895, I again demanded payment of said coupons, as also the coupons attached to said bonds which matured July 1, 1895, at the office of said trust company, in New York city, and

payment of said January and July, 1895, coupons was again refused for want of money to pay the same.

670 I am informed the Lake Street Elevated Railroad Company has entered upon some plan to take up and cancel the bonds secured by said trust deed, and in lieu and substitution thereof to issue to the holders thereof other so-called debenture bonds at the rate of only sixty per cent. (60 %) of said original gold mortgage bonds secured by said trust deed, and said The Lake Street Elevated Railroad Company has given out that it has secured the consent of holders of over $6,000,000, par value of said mortgage bonds, to surrender their original bonds, and to accept in lieu and substitution sixty per cent. (60 %) thereof in said new debenture bonds, guaranteed or secured in some way by a corporation designated the Northwestern Elevated Railroad Company of Chicago, Illinois.

Further, that the directors of said The Lake Street Elevated Railroad Company, in excess of their powers and in fraud of the rights of said original mortgage bondholders, have passed some resolution impairing or tending to impair the conditions of said trust deed and render it inoperative in some of its provisions, and that said directors have passed some resolution to the effect that the earnings of said The Lake Street Elevated Railroad Company should be used in paying interest on said new debenture bonds to the exclusion of paying interest on said original mortgage bonds, which is in fraud of the rights of the undersigned as an owner of a part of said original bonds.

671 I call your attention to the provisions of the trust deed or mortgage securing the bonds which I hold and own, and which states specifically that the property rights, etc., of the Lake Street Elevated Railroad Company are held by the trustees under said trust deed 'for the equal *pro rata* use, benefit, and security of each and all and every the persons or corporations who may be or become holders of any of the above-mentioned original mortgage bonds without any preference or priority of any one bond over another by reason of priority or otherwise.'

I respectfully request therefore that the Lake Street Elevated Railroad Company inform me if any of the funds of said company have been, in violation of the trust agreement, used for the purpose of paying interest on the aforesaid debenture bonds.

I respectfully request the Farmers' Loan & Trust Company and the American Trust & Savings bank, trustees, to examine the books of account of the Lake Street Elevated Railroad Company and ascertain what have been the net earnings of said railroad company for the past six months and what disposition has been made thereof; and if it be found there has been any unlawful use or diversion of said net earnings to the payment of interest on debenture bonds not known to the trust deed, I call upon said trustees to take such action as will nullify the wrong done and punish the wrong-doers.

WILLIAM ZIEGLER,
By J. M. COMAN,
Att'y, 46 Cedar St., N. Y. City."

672 EXHIBIT KOPF E.

"246 CANAL ST., N. Y. CITY, *July* 13, 1895.

To the American Trust & Savings Bank of Chicago, Illinois, trustee, and the Farmers' Loan & Trust Company of the City of New York, cotrustees, under the trust deed from the Lake Street Elevated Railroad Company of Chicago, Illinois, dated April 7, 1893, and filed for record in the recorder's office of Cook county, Ill., May 6, 1893, and recorded in the office of the secretary of state of the State of Ill., at Springfield, Ill., May 23, 1893, and given to secure certain first-mortgage gold bonds of the denomination of $1,000 each, as therein recited, and to said The Lake Street Elevated Railroad Company, maker of said trust deed and the bonds secured thereby, and the interest coupons attached to said bonds, maturing respectively on the first day of January and July of each year until the maturity of said bonds:

As owners of nine (9) of said bonds and the interest coupons attached thereto, we did, on January 2, 1895, present for payment to the Farmers' Loan & Trust Company aforesaid, at its regular place of business, in said New York city, all the interest coupons attached to said bonds and each and every of them which matured and became due on, to wit, January 1, 1895, and payment was refused for want of funds wherewith to pay the same.

673 On July 1st, 1895, we again demanded payment of said coupons, as also the coupons attached to said bonds which matured July 1, 1895, through the Central National Bank of New York, of the American Trust & Savings bank, Chicago, and payment of said January and July, 1895, coupons was again refused for want of money to pay the same.

We are informed the Lake Street Elevated Railroad Company has entered upon some plan to take up and cancel the bonds secured by said trust deed, and in lieu and substitution thereof to issue to the holders thereof other so-called debenture bonds at the rate of only sixty per cent. (60%) of said original gold mortgage bonds secured by said trust deed, and said The Lake Street Elevated Railroad Company has given out that it has secured the consent of holders of over $6,000,000 par value of said mortgage bonds to surrender their original bonds and to accept in lieu and substitution sixty per cent. (60%) thereof in said new debenture bonds, guaranteed or secured in some way by a corporation designated the Northwestern Elevated Railroad Company of Chicago, Illinois.

Further, that the directors of said The Lake Street Elevated Railroad Company, in excess of their powers and in fraud of the rights of said original mortgage bondholders, have passed some resolution impairing or tending to impair the conditions of said trust deed and render it inoperative in some of its provisions, and that said directors have passed some resolution to the effect that the earnings of said The Lake Street Elevated Railroad Company should

674 be used in paying interest on said new debenture bonds to the exclusion of paying interest on said original mortgage

bonds, which is in fraud of the rights of the undersigned as owners of a part of said original bonds.

We call your attention to the provisions of the trust deed or mortgage securing the bonds which we hold and own and which states specifically that the property rights, etc., of the Lake Street Elevated Railroad Company are held by the trustees under the said trust deed 'for the equal *pro rata* use, benefit, and security of each and all and every the persons or corporations who may be or become holders of any of the above-mentioned original mortgage bonds, without any preference or priority of any one over another by reason of priority or otherwise.'

We respectfully request, therefore, that the Lake Street Elevated Railroad Company inform us if any of the funds of said company have been, in violation of the trust agreement, used for the purpose of paying interest on the aforesaid debenture bonds.

We respectfully request the Farmers' Loan & Trust Company and the American Trust & Savings bank, trustees, to examine the books of account of the Lake Street Elevated Railroad Company and ascertain what have been the net earnings of said railroad company for the past six months and what disposition has been made thereof, and if it be found there has been any unlawful use or diver-
675 sion of said net earnings to the payment of interest on debenture bonds not known to the trust deed, we call upon said trustees to take such action as will nullify the wrong done and punish the wrong-doers.

LAWRENCE E. ELLIS,
Owner of 4 Bonds, 246 Canal St., N. Y. City,
OLIVER A. MacMAHON,
Owner of 5 Bonds, 260 East Broadway, N. Y. City,
By J. M. COMAN,
Att'y, 46 Cedar St., N. Y. City."

EXHIBIT KOPF F.

"394 HUDSON ST., NEW YORK, *July 20th*, 1895.

To the American Trust & Savings Bank of Chicago, Illinois, trustee, and the Farmers' Loan & Trust Company of the City of New York, cotrustees under the trust deed from the Lake Street Elevated Railroad Company of Chicago, Illinois, dated April 7, 1895, and filed for record in the recorder's office of Cook county, Ill., May 6, 1893, and recorded in Book 4256 of Records, at page 230, and also recorded in the office of the secretary of state of the State of Ill., at Springfield, Ill., May 23, 1893, and given to secure certain first-mortgage gold bonds of the denomination of $1,000 each, as therein recited, and to said The Lake Street Elevated Railroad Company, maker of said trust deed and the bonds secured thereby and the interest coupons attached to said bonds, maturing
676 respectively on the first day of January and July of each year until the maturity of said bonds:

As owner of twelve of said bonds, numbers 4529, 4530, 4533, 4531, 4532, 4536, 4534, 4535, 4537, 4522, 4526, 4528, and the interest

coupons attached thereto, I did on Jan. 2, 1895, present for payment to the Farmers' Loan & Trust Company aforesaid, at its regular place of business in said New York city, all the interest coupons attached to said bonds and each and every of them which matured and became due on, to wit, January 1, 1895, and payment was refused for want of funds wherewith to pay the same.

On July 1st, 1895, I again demanded payment of said coupons, as also the coupons attached to said bonds which matured July 1, 1895, at the office of said trust company in New York city, and payment of said January and July, 1895, coupons was again refused for want of money to pay the same.

I am informed the Lake Street Elevated Railroad Company has entered upon some plan to take up and cancel the bonds secured by said trust deed, and in lieu and substitution thereof to issue to the holders thereof other so-called debenture bonds at the rate of only sixty per cent. (60 %) of said original gold mortgage bonds secured by said trust deed, and said The Lake Street Elevated Railroad Company has given out that it has secured the consent of
677 holders of over $6,000,000 par value of said mortgage bonds to surrender their original bonds and to accept in lieu and substitution sixty per cent. (60 %) thereof in said new debenture bonds, guaranteed or secured in some way by a corporation designated the Northwestern Elevated Railroad Company of Chicago, Illinois.

Further, that the directors of said The Lake Street Elevated Railroad Company, in excess of their powers and in fraud of the rights of said original mortgage bondholders, have passed some resolution impairing or tending to impair the conditions of said trust deed and render it inoperative in some of its provisions, and that said directors have passed some resolution to the effect that the earnings of said The Lake Street Elevated Railroad Company should be used in paying interest on said new debenture bonds to the exclusion of paying interest on said original mortgage bonds, which is in fraud of the rights of the undersigned as an owner of a part of said original bonds.

I call your attention to the provisions of the trust deed or mortgage securing the bonds which I hold and own and which states specifically that the property rights, etc., of the Lake Street Elevated Railroad Company are held by the trustees under said trust deed 'for the equal *pro rata* use, benefit, and security of each and all and every the persons or corporations who may be or become holders of any of the above-mentioned original mortgage bonds, without any preference or priority of any one bond over an-
678 other by reason of priority or otherwise.'

I respectfully request, therefore, that the Lake Street Elevated Railroad Company inform me if any of the funds of said company have been, in violation of the trust agreement, used for the purpose of paying interest on the aforesaid debenture bonds.

I respectfully request the Farmers' Loan & Trust Company and the American Trust & Savings bank, trustees, to examine the books of account of the Lake Street Elevated Railroad Company and as-

certain what have been the net earnings of said railroad company for the past six months and what disposition has been made thereof, and if it be found there has been any unlawful use or diversion of said net earnings to the payment of interest on debenture bonds not known to the trust deed I call upon said trustees to take such action as will nullify the wrong done and punish the wrong-doers.

JAMES B. RYAN."

EXHIBIT KOPF K.

"46 CEDAR STREET, NEW YORK, *July* 24, 1895.

The American Trust & Savings bank, trustee, Chicago, Illinois.

DEAR SIRS: Your favor of July 18th duly received and noted.

On January 3 and again on July 1, 1895, I presented to the Farmers' Loan & Trust Company the January 1 coupons
679 from Mr. Ziegler's Lake Street Company's bonds and demanded payment thereof, which was both times refused.

Under date July 6, 1895, the First National Bank of Chicago returned to the Central national bank of this city Ellis and McMahon Lake Street coupons due January 1 and stated 'payment is refused.'

The Farmers' Loan & Trust Company is cotrustee under the Lake Street Elevated Railroad Company's mortgage, and the coupons attached to bonds of said company, secured by said mortgage, specifically state that same are payable at the Farmers' Loan & Trust Company or at your office, and the Farmers' Loan & Trust Company is still cotrustee under said mortgage. In view of these facts, I believe that owners of unpaid and due Lake Street coupons are entitled to interest at legal rate from date of presentation to and demand of either of said trustees to the date of payment on the face value of said due coupons. I would be pleased to have your decision on this point.

From your letter I conclude that you have funds in hand for payment of the July 1 interest on the Lake Street first-mortgage bonds that have not been deposited under the 'Slaughter' scaling agreement, as I am informed that the income, tolls, fares, etc., of the Lake Street Elevated Railroad Company for the period ending June 30, 1895, have been used for the payment of interest due July 1, 1895, on the so-called debenture bonds issued for 60 % of par value
680 of and secured by the first-mortgage Lake Street Company's bonds deposited under said scaling agreement. Will the Farmers' Loan & Trust Company be provided with funds for payment of July 1 coupons, or must they also be sent to you?

Yours very truly, J. M. COMAN.

Ans. Jul- 29, 1895."

Q. Mr. Burry says in this letter of July 26th, "I will communicate with you further." Did he communicate with you further in regard to that?

A. Not that I remember, although I would not be certain.

Q. Did you receive any requests from any bondholders subsequent to those of July, 1895?

A. Yes, sir; I received a request from William Ziegler.
Q. Is this it?
A. Yes, sir.

Thereupon solicitors for complainant offered and read said last-mentioned request in evidence as follows, to wit:

EXHIBIT KOPF G.

"NEW YORK, *October* 7, 1895.

To the American Trust & Savings bank, trustees, Chicago, Ill., and the Farmers' Loan & Trust Company, cotrustee, New York:

On April 7, 1893, the Lake Street Elevated Railroad Company of Chicago, Ill., executed and delivered to you, as trustee and
681 cotrustee respectively, a trust deed to secure certain bonds, which under the provisions of said trust deed were issued in the aggregate of about $7,400,000, of which the undersigned, William Ziegler, of New York, is the owner of 392, of the par value of $392,000.

That said railroad company has caused $6,400,000 par value—*i. e.*, 6,400—of said bonds to be taken up and retired, leaving only 1,000 of said bonds, of the par value of $1,000,000, outstanding.

That said bonds owned by the undersigned are part of said 1,000 original first mortgage bonds now outstanding and subject to the conditions of said trust deed.

That there has been default in the payment of the January and July, 1895, interest coupons cut from the said bonds of the undersigned, shown on the schedule attached hereto, which said coupons have been duly presented for payment at said Farmers' Loan & Trust Company, N. Y., as provided in said coupons, bonds, and trust deed.

Wherefore, by reason of the premises and such default, I demand that within ten days from the service of this notice and demand upon you that you proceed, by suit to foreclose said trust deed or by other appropriate remedy under said trust deed, to enforce the payment of said January and July, 1895, interest coupons owned by the undersigned, as provided in said trust deed, with legal interest thereon from the date of their respective maturity.

682 That you may be properly indemnified against any liability in enforcing the covenants of said trust deed, I hereby tender you a bond of indemnity, and I hereby offer to supplement it with any reasonable security you may demand and offer a reasonable sum of money to defray immediate costs of a foreclosure of said trust deed or other proceeding.

Upon the receipt of this notice and demand you will please advise Mr. Wm. Ziegler, No. 46 Cedar street, N. Y., what further security or indemnity you desire under said trust deed to warrant you in proceeding under the same.

I am ready and willing to produce and exhibit to you, at the office of the Farmers' Loan & Trust Company aforesaid in N. Y.,

the original bonds from which said coupons are cut and establish my ownership thereof.

Said coupons are now in the possession of said trust company for payment or use in foreclosure or other proceedings.

Said coupons being negotiable commercial paper, I demand legal interest thereon from date of their maturity.

I demand that you enforce the conditions of said trust deed.

WILLIAM ZIEGLER,
Owner of 392 *of said Bonds, of Par Value of* $392,000.00.

Schedule of Numbers of said 392 *Bonds.*

Nos. 2016 to 2038, inclusive	23	bonds.
" 3135, 3136	2	"
" 3046, 3047	2	"
" 4598 to 4601, inclusive	4	"
" 4652 to 4867, "	216	"
" 7212 to 7356, "	145	"
Total	392	"

683 Q. Were these two documents also received by your bank as trustee in the mortgage?

A. Yes, sir.

Thereupon solicitor for complainant offered and read said two last-mentioned documents in evidence, the same being marked Exhibits Kopf H and Kopf J respectively and being respectively as follows, to wit:

EXHIBIT KOPF H.

"To the Farmers' Loan and Trust Company of New York City, the American Trust and Savings Bank of Chicago, Illinois; Messrs. Runnells & Burry, attorneys for the Farmers' Loan & Trust Company; Messrs. Moran, Kraus & Mayer, attorneys for the American Trust & Savings bank; Messrs. Herrick, Allen & Boyesen, attorneys for William Ziegler and others:

You and each of you will please take notice that the Lake Street Elevated Railroad Company will not pay the interest due on the debentures heretofore issued by the Lake Street Elevated Railroad Company and upon which interest is due January 1, 1896; that said interest will be paid by the guarantor of said debenture bonds, and that any statement made to you or either of you by any party that the Lake Street Elevated Railroad Company intends to or will use any of its funds to pay said interest, as aforesaid, is untrue.

THE LAKE STREET ELEVATED
RAILROAD COMPANY,
By D. H. LOUDERBACK, *President.*"

684 EXHIBIT KOPF J.

"CHICAGO, *December* 30, 1895.

To the American Trust & Savings bank, Chicago, and the Farmers' Loan and Trust Company, New York, trustees in and under the deed of trust executed by the Lake Street Elevated Railroad Company, under date of April 7, 1893.

GENTLEMEN: The undersigned is the holder of more than six thousand (6,000) of the bonds named in and secured by said trust deed, and respectfully calls your attention to the fact that every right of action, whether at law or in equity, under said trust deed is vested in you exclusively, and the undersigned hereby states that all of the bonds held by it are outstanding under the language and intent of said trust deed; that none of them have been cancelled, paid, or discharged in any part; also that all of the coupons for the interest upon said bonds maturing on and after July 1, 1895, are held by the undersigned and are unpaid and uncancelled, and the undersigned further expresses to you that all statements which may have been made to you that any or all of the said bonds and coupons so held by the undersigned have been settled or cancelled or have ceased to be outstanding under said trust deed are without foundation.

Yours truly,

THE NORTHERN TRUST COMPANY,
By BYRON L. SMITH, *President.*"

[SEAL.]
Attest: ARTHUR HEURTLEY, *Secretary.*

685 Q. Have you had charge of the payment of the interest money upon the coupons on the Lake Street Elevated Railroad Company bonds?

A. Yes, sir.

Q. Has any of that interest been paid through the Farmers' Loan & Trust Company?

A. Yes, sir; some of it has.

Q. How was that done?

A. We sent them a certain portion of the money down there, and they paid until it was exhausted and then asked for more.

686 Q. What would become of the coupons that were paid?

A. They canceled them and sent them to us.

Q. Sent them to you?

A. Yes, sir.

Q. What did you do with them?

A. Held them until called for by the Lake Street Company.

Q. Do you know anything about the interest money that was deposited there in December, 1894, for the January 1st, 1895, coupons?

A. Yes, sir.

Q. What do you know about it?

A. The money was deposited by Mr. Garey.

Mr. BURRY: I object to that as immaterial.
The COURT: The objection is sustained.

Mr. KNIGHT: In your dealings under this mortgage of the Lake Street Elevated Railroad Company, have you received any communication so far from the Northern Trust Company?
A. In what respect?
Q. In connection with the affairs arising under the trust deed.
A. We have had more or less correspondence all the time with them; yes, sir.
Q. Where is that correspondence?
A. Some of it was delivered to Mr. Mayer and we have some of it in our possession.
Q. Will you please look it up and have it here tomorrow morning? In the dealings pertaining to the property covered by the mortgage to the Lake Street Elevated Railroad Company, what have been the relations of the two trustees as to that property, as to caring for it, looking after it, and so forth?

687 Objected to by counsel for defendants.

Q. Has the Farmers' Loan and Trust Company acted jointly with you in the care and management of the trust estate?

Objected to by counsel for defendants.
The COURT: If he knows he may answer.

A. I don't remember that they ever consulted us in regard to the management of the company.
Mr. KNIGHT: In relation to the property and affairs arising under the mortgage, haven't they acted jointly with you in all matters pertaining to the issue of all bonds and everything else?

Objected to as leading.

A. Yes, sir.
Q. Payment of interest and all that sort of thing?
A. Yes, sir.
Mr. BURRY: Was it all by correspondence?
A. Oh, yes.
Mr. BURRY: I move to strike it out.

Motion sustained.

The COURT: They have done nothing except to write letters?
A. That is about all.
Mr. KNIGHT: Have you had any communication from Mr. Burry?
A. Yes, sir.
Q. That is not by correspondence, is it?
A. Well, I personally have not had any communication with Mr. Burry.
Q. Mr. Burry has been in to see Mr. Shaw and not you personally?
A. No, sir.

688 Q. You don't know anything about it?
A. No, sir.
Q. Was there an underwriting agreement gotten up by the Lake Street Elevated Railroad Company and deposited in your bank?
A. The original underwriting agreement for the six million and a half of bonds?
Q. Yes.
A. Yes, sir.
Q. Did you ever receive in connection with that any money or transact any business in connection with it with the Farmers' Loan and Trust Company?

Objected to by counsel for defendants.
The COURT: He may answer the question.

Mr. KNIGHT: What are the facts in regard to that?
A. The Farmers' Loan and Trust Company acted with us in collecting the money that was subscribed for the bonds and in delivering the securities that were due for payment, and they remitted the proceeds of the payments to us.
Q. You disbursed them to the directors?
A. They were placed at the disposal of the directors of the Lake Street Company.
Q. What year was that?
A. That was in 1893 and a portion of 1894.
Q. Do you know about the aggregate amount you received from the Farmers' Loan and Trust Company?
A. I don't know exactly; between half a million and a million somewhere.

689 Cross-examination by Mr. BURRY:

Q. They did the work in New York and you did it here?
A. Yes, sir.
Q. What was to be done in New York was done by the Farmers' Loan and Trust Company, and what was to be done in Chicago was done by you, is that the way?
A. Yes, sir.
Q. That was an wholly independent transaction from this trust deed, was it not?
A. I should think so; yes.
Q. Was it a separate agreement?
A. Yes, sir.

Redirect examination by Mr. KNIGHT:

Q. You have identified certain requests made by bondholders in July, 1895, and in October, 1895. Did you ever receive any other requests made by bondholders?
A. Yes, sir.
Q. Are these the ones (handing papers to witness)?
A. Those were received; yes, sir.

Mr. KNIGHT: I offer them in evidence.

690 Said last-mentioned papers are marked Exhibits Kopf L, M, & N, and are respectively as follows:

691 EXHIBIT KOPF "L."

"1.

To the American Trust & Savings Bank of Chicago, Illinois, trustee, and the Farmers' Loan & Trust Company of New York City, cotrustee:

The undersigned, George Cleveland, is the owner of twenty-one of the first mortgage bonds of the par value of $21,000, and the unpaid coupons for interest due and to become due on said bonds, issued by the Lake Street Elevated Railroad Company of Chicago, Illinois, and secured by the certain trust deed, dated April 7th, 1893, executed and delivered by the Lake Street Elevated Railroad Company to you as trustee and cotrustee, respectively.

The interest coupons cut from the said bonds of the undersigned, due January 1st, 1895, were duly presented for payment at the office of said American Trust & Savings bank, Chicago, as provided in said coupons, bonds, and trust deed. Thereupon default was made in the payment of said interest coupons and such default continued until about the 22nd day of June, 1895, when payment was made of said coupons.

The undersigned is informed that in like manner the interest coupons cut from others of said bonds to a large amount, due January 1st, 1895, were duly presented for payment, and thereupon default was made in their payment, and such default continued until the latter part of July, 1895, when said coupons were paid.

692 The interest coupons cut from said bonds of the undersigned, due July 1st, 1895, were duly presented for payment at the office of said American Trust & Savings bank, Chicago, as provided in said coupons, bonds, and trust deed. Thereupon default was made in the payment of said interest coupons, due July 1st, 1895, and such default still continues.

The undersigned is also informed that in like manner the interest coupons cut from other of said bonds to a large amount, due July 1st, 1895, were duly presented for payment, and thereupon default was made in their payment and such default still continues.

I desire to call your attention to the following facts, which I am advised by counsel are material to your duties as trustees under said trust deed and to my rights as a holder of bonds secured by said trust deed:

When the January coupons came due the holders, including the undersigned, were met with a demand by the mortgagor, the Lake Street Elevated Railroad Company, that they assign their coupons, to be kept alive instead of cancelled. On the refusal of the holders of any of the coupons to assign the same in accordance with this demand default was made in their payment and such default con-

tinued until the latter part of July, 1895, when, after repeated demands by different holders, they were paid.

In the meantime default had been made in the payment of the July coupons, and the company, while paying the January coupons, after about seven months' default, did not pay and has not
693 yet paid the July coupons, and the default in the payment of these coupons still continues, notwithstanding repeated demands for payment by different holders.

The company has thus been continuously in default in the payment of interest on its bonds secured by the trust deed to you for the period of over eleven months.

Under date of February 21st, 1895, an agreement in writing was signed by certain holders of the bonds secured by the trust deed to you, whereby John R. Walsh, George H. Webster, and A. O. Slaughter were appointed attorneys for the signers to enter into an arrangement whereby the bonds of the signers were to be delivered to the Northern Trust Company, as trustee, and the holders were to receive in place of their bonds the debenture bonds of the mortgagor, the Lake Street Elevated Railroad Company, to the amount of sixty per cent. of the par value of the bonds delivered, and unsecured income bonds to the amount of 15 per cent. of such par value.

The debenture bonds provided for were to draw interest at 5 per cent. from the 1st day of January, 1895, payable semi annually, on the first days of January and July in each year. It was also provided that the debenture bonds should be guaranteed by the Northwestern Elevated Railroad Company.

It was further provided by this agreement that it was the purpose of the arrangement to permit the railroad company to issue,
694 as against the bonds deposited under it, a negotiable debenture, which should rest as security on the bonds so deposited, and that the lien of the mortgage and the security thereunder for the bonds deposited should remain to the full amount of the face of the bonds and the interest thereon until such time as the debentures might be paid or all surrendered to the trust company for cancellation.

There were also provisions permitting other bondholders to sign the agreement and deposit their bonds from time to time on specified conditions.

For the other particulars of this agreement you are referred to the agreement itself, a copy of which will be furnished you on request if you have not already received a copy.

The railroad company having agreed to this arrangement with the signing bondholders, the holders of more than a majority of the bonds which had been issued under the trust deed signed the agreement and delivered their bonds to the trust company. An instrument was then executed by the trust company, defining the trust on which the bonds were held in accordance with the bondholders' agreement, and the debentures and the income bonds provided for were issued by the railroad company.

When the first installment of interest came due on these debent-

ure bonds (July 1st, 1895) the railroad company, notwithstanding it was still in default for its January interest on its first-mortgage bonds secured by the trust deed to you, paid the installment of
695 interest on the debenture bonds, leaving the interest coupons on the bonds, in place of which they were issued, uncancelled in the hands of the trust company, and at the same time not only continued in default in the January interest due on the first-mortgage bonds, but also made default in the payment of the interest due July 1st, 1895, on all the mortgage bonds the holders of which had not signed the agreement referred to and accepted the debentures and income bonds in place of their bonds.

As already stated, the railroad company continued in default in the payment of its January interest on the mortgage bonds until the latter part of July, 1895, and still continues in default in the payment of the July interest, notwithstanding repeated demands by different holders, both on the company for payment and on you for the enforcement of payment.

Your attention is called to the fact that by the express terms of the trust deed to you the railroad company conveyed not only the railroad, franchises, and other property, but also 'all and singular * * * the income, tolls, fares, profits, and advantages belonging to the railroad company appertaining to or to arise or to accrue from the said railroad and the maintenance and operation thereof, * * * together with all and singular the tenants * * * and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.'

Your attention is also called to the fact that the condition
696 of the mortgage is that the railroad company 'shall well and truly pay or cause to be paid to the holders thereof the principal of all the bonds secured or intended so to be and the interest moneys to become due thereon, respectively at the time and in the manner specified in the said bonds and coupons.'

Your attention is also called to the fact that the railroad and the 'income, tolls, fares, profits, etc.,' so conveyed were conveyed to you in trust 'for the equal *pro rata* use, benefit, and security of each and all and every the persons or corporations who may be or become holders of the above-mentioned bonds, numbered from one (1) to the highest number that may be issued, inclusive, without any preference or priority of any one bond over another by reason of priority in the time of issue or negotiation thereof or otherwise howsoever.'

Your attention is also called to the fact that by the express terms of the trust deed the railroad company is only entitled to the possession and use of the property and 'the rents, income, and profits thereof' 'until default shall be made by the railroad company, its successors or assigns, in the payment of the principal or interest of the said bonds hereby created or some of them or in the performance of some other of the covenants, stipulations, or provisions on its part herein contained.'

Your attention is also called to the fact that under the ex-
697 press terms of the trust deed, if default is made 'in the payment of any interest moneys mentioned in the said bonds

and coupons when the same become due and is demanded, whether said default shall have continued for said period of six months or not,' you are authorized and empowered to take full possession of the railroad and all the property mortgaged, and 'hold, use, manage, maintain, and operate said railroad' and 'collect and receive all moneys and revenues arising from such management' and, 'next to the payment *pro rata* of the interest due and in default,' to apply the income to the purposes specified.

Your attention is also called to the fact that by said trust deed the railroad company expressly covenants that 'immediately upon the commencement' by you 'of any suit or other legal proceeding to obtain possession of' the property mortgaged, it will waive service of process, enter its voluntary appearance and consent to the entry of a judgment for the recovery and possession of the property mortgaged 'and every part thereof.'

I am advised by counsel that by the action of said railroad company and the holders of the majority of the mortgage bonds issued under said agreement of February 21st, 1895, and the issue of said debentures and said payment of interest thereon and the other facts connected therewith, the holders of said majority of the bonds became and are disabled from exercising the several powers vested by said mortgage in the majority of the bonds outstanding.

698 I am further advised by counsel that said railroad company has, by its action, waived the benefit of and abrogated said provisions, and that it is your duty as trustees, irrespective of said provisions, to perform the duties and exercise the powers vested in you by said trust deed, 'for the equal *pro rata* use, benefit, and security' of all the bondholders, and on default in the payment of interest to take appropriate action to enforce payment and to prevent any diversion of the income to other purposes than the equal *pro rata* payment to the mortgage bondholders, and otherwise enforce the provisions of said trust deed.

You are hereby notified that, as the holder of twenty-one bonds secured by said trust deed, I shall hold you and each of you to strict accountability for the discharge of the duties imposed on you by said trust deed, and that in the event of the use or other diversion of any of the income of said railroad, after any default in the payment of interest, to other purposes than the payment of the overdue interest on the first mortgage bonds of said company, or other purposes not authorized by said trust deed which you could have prevented or can prevent by the performance of any duty imposed on you by said trust deed, whereby the mortgage debt, or any part thereof, is left unpaid to my injury as holder of said bonds, I shall hold you and each of you liable therefor.

I further demand that you proceed, by suit or suits or other appropriate remedy, to enforce said trust deed and the rights of
699 the bondholders under the same for the equal benefit of all the bondholders, hereby tendering any evidence that you may require under said trust deed as to my ownership of said bonds and coupons, and also tendering such indemnity or security as shall be

satisfactory to you against any costs, expense, or other liability by reason of the action requested.

Upon receipt of this notice and demand, you will please advise George Cleveland, 175 Park avenue, Orange, New Jersey, or my attorneys, Messrs. Herrick, Allen & Boyesen, 107 Dearborn street, Chicago, what proof, security, or indemnity you require.

GEORGE CLEVELAND,
Owner of 21 *of said Bonds, of the Par Value of* $21,000.

700 *Schedule of Numbers of said* 21 *Bonds.*

Nos. 2069 to 3080, inclusive	12	bonds.
" 3164 to 3167, inclusive	4	"
" 4582 to 4585, inclusive	5	"
Total	21	bonds."

701 EXHIBIT KOPF "M."

" To the American Trust & Savings Bank of Chicago, Illinois, trustee, and the Farmers' Loan & Trust Company of New York City, cotrustee:

The undersigned, George Cleveland, is the owner of twenty-one of the first-mortgage bonds of the par value of $21,000, and the unpaid coupons for interest due and to become due on said bonds, issued by the Lake Street Elevated Railroad Company of Chicago, Illinois, and secured by the certain trust deed dated April 7th, 1893, executed and delivered by the Lake Street Elevated Railroad Company to you as trustee and cotrustee respectively.

The interest coupons cut from the said bonds of the undersigned due January 1st, 1893, were duly presented for payment at the office of said American Trust & Savings bank, Chicago, as provided in said coupons, bonds, and trust deed. Thereupon default was made in the payment of said interest coupons, and such default continued until about the 22nd day of June, 1895, when payment was made of said coupons.

The undersigned is informed that in like manner the interest coupons cut from other of said bonds to a large amount, due January 1st, 1895, were duly presented for payment, and thereupon default was made in their payment, and such default continued
702 until about the latter part of July, 1895, when said coupons were paid.

The interest coupons cut from said bonds of the undersigned due July 1st, 1895, were duly presented for payment at the office of said American Trust & Savings bank, Chicago, as provided in said coupons, bonds, and trust deed. Thereupon default was made in the payment of said interest coupons due July 1st, 1895, and such default still continues.

The undersigned is also informed that in like manner the interest coupons cut from other of said bonds to a large amount, due July 1st, 1895, were duly presented for payment, and thereupon default was made in their payment, and such default still continues.

In view of the facts set forth in my communication to you dated December 19, 1895, and of the other facts well known to you, I, as the holder of twenty-one bonds secured by said trust deed and of the coupons for the interest due and unpaid thereon, hereby make the following demands:

1. I demand that you proceed forthwith, by suit or other appropriate remedy, to take possession of the railroad and other property conveyed by said trust deed, to the end that the income of said railroad and other property may be applied to the payment *pro rata* of the interest due and unpaid on the bonds secured by said trust deed, and that said trust deed may be otherwise enforced to the equal benefit of the holders of the bonds secured thereby.

703 2. I demand that you proceed by suit in equity to foreclose said trust deed for the payment of the amount due and unpaid on the bonds and coupons secured thereby.

3. I demand that you proceed by suit to compel the cancellation, in whole or in part as the court shall determine, of the interest coupons due on July 1, 1895, on the mortgage bonds held by the Northern Trust Company in place of which the debentures were issued by reason of the payments heretofore made by the mortgagor, the railroad company, to the holders of the debentures or the Northern Trust Company for them for interest due on July 1, 1895.

4. I demand that you proceed by suit or other appropriate remedy to compel the application by said railroad company of the income of said railroad since said default in payment of interest to the payment of such amount or amounts as may be due and unpaid on said first-mortgage bonds.

5. I demand that you proceed by suit or other appropriate remedy to prevent the diversion in the future of any part of the income of said railroad to the payment of interest on said debentures before the payment of all interest then due on said first-mortgage bonds or otherwise in preference to said first-mortgage bonds.

6. I demand that you proceed by suit or other appropriate remedy to ascertain the diversions heretofore made by said railroad

704 company of any of the income of said railroad subsequent to said defaults in interest to any purpose not authorized by said trust deed after such default, and to compel the restoration and application of any amounts so diverted to the payment of any amounts due or to become due while such default continues.

7. I demand that you institute the proper suit or proceeding to secure the appointment of a receiver of said mortgaged property to the end that its income and the other mortgaged property may be applied to the payment of the amount due now on said bonds and coupons, and for the conservation of the property, assets, and franchises of said railroad company pending the final determination of any suit for foreclosure or other suit.

That you may be properly indemnified against any costs, expenses, or other liability in taking the action demanded, I hereby tender you a bond of indemnity or any reasonable security you may demand and offer a reasonable sum of money to cover immediate costs.

I am ready and willing to produce and exhibit to you at the office of the Farmers' Loan and Trust Company of New York the original bonds and coupons and establish my ownership of the same, or I will furnish such other proper evidence as you may require of my ownership of said bonds and coupons.

Upon the receipt of this notice and demand, you will please advise George Cleveland, 175 Park avenue, Orange, New Jersey, or my attorneys, Messrs. Herrick, Allen & Boyesen, 107 Dear-
705 born St., Chicago, what proof, security, or indemnity you require.

Dated December 20th, A. D. 1895.

GEORGE CLEVELAND,
Owner of 21 *of said Bonds, of the Par Value of* $21,000.

Schedule of Numbers of said 21 *Bonds.*

Nos. 3068 to 3080,	inclusive	12	bonds.
" 3164 to 3167,	"	4	"
" 4521 to 4525,	"	5	"
Total		21	" "

EXHIBIT KOPF "N."

"To the American Trust & Savings Bank of Chicago, Illinois, trustee, and the Farmers' Loan and Trust Company of New York City, cotrustee:

The undersigned, William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, Stewart L. Woodford, are the owners of 610 of the first-mortgage bonds of the par value of $610,000 and the unpaid coupons for interest due and to become due on said bonds
706 issued by the Lake Street Elevated Railroad Company of Chicago, Illinois, and secured by the certain trust deed, dated April 7th, 1893, executed and delivered by the Lake Street Elevated Railroad Company to you as trustee and cotrustee respectively.

The said 610 bonds are owned as follows:

The undersigned, William Ziegler, is the owner of 400 of said bonds of the par value of $400,000.

The undersigned, George Cleveland, is the owner of 21 of said bonds of the par value of $21,000.

The undersigned, Effingham H. Nichols, is the owner of 55 of said bonds of the par value of $55,000.

The undersigned, William M. Van Anden, is the owner of 30 of said bonds of the par value of $30,000.

The undersigned, Charles Smith, is the owner of 15 of said bonds of the par value of $15,000.

The undersigned, James B. Ryan, is the owner of 12 of said bonds of the par value of $12,000.

The undersigned, William R. Peters, is the owner of 13 of said bonds of the par value of $13,000.

The undersigned, Jere Johnson, Jr., is the owner of 10 of said bonds of the par value of $10,000.

The undersigned, James V. S. Woolley, is the owner of 10 of said bonds of the par value of $10,000.

The undersigned, Oliver A. McMahon, is the owner of 5 of said bonds of the par value of $5,000.

707 The undersigned, Edward Entwistle, is the owner of 5 of said bonds of the par value of $5,000.

The undersigned, Lawrence E. Ellis, is the owner of 4 of said bonds of the par value of $4,000.

The undersigned, Lizzie Wentworth Wright, is the owner of 5 of said bonds of the par value of $5,000.

The undersigned, Stewart L. Woodford, is the owner of 5 of said bonds of the par value of $5,000.

The said 610 bonds owned by the undersigned are more than a majority of all the bonds issued under said trust deed other than the bonds which have been deposited with the Northern Trust Company in pursuance of the certain agreement dated February 21, 1895, and for which debenture bonds to the amount of 60 % of the par value thereof and unsecured income bonds to the amount of 15 % of such par value were issued in pursuance of said agreement. The said bonds so deposited with the Northern Trust Company amount to over $6,400,000, par value. The interest on all the debentures issued for said bonds so deposited, which was due on July 1, 1895, was heretofore paid by the Lake Street Elevated Railroad Company.

The interest coupons due January 1, 1895, cut from the said bonds of the undersigned, excepting William Ziegler, were duly presented for payment at the office of either said Farmers' Loan & Trust Company, New York, or the American Trust & Savings bank, Chicago, as provided in said coupons, bonds, and trust deed. There-

708 upon default was made in the payment of said interest coupons, and such default continued until the latter part of July, 1895, when payment was made of said coupons.

The interest coupons due January 1, 1895, cut from 392 of said bonds of the undersigned William Ziegler were duly presented for payment at the office of said Farmers' Loan and Trust Company, New York, as provided in said coupons, bonds, and trust deed. Thereupon default was made in the payment of said interest coupons, and such default continued until October 10, 1895, and said William Ziegler claims said default still continues.

The interest coupons cut from said bonds of the undersigned, due July 1, 1895, were duly presented for payment at the office of said Farmers' Loan and Trust Company, New York, as provided in said coupons, bonds, and trust deed. Thereupon default was made in the payment of said interest coupons due July 1, 1895, and such default still continues.

In view of the facts set forth in the communication of the undersigned, George Cleveland, to you, dated December 19, 1895, and of

the other facts well known to you, the undersigned, as the holders of said 610 bonds secured by said trust deed, and of the coupons for the interest due and unpaid thereon, hereby make the following demands:

1. We demand that you proceed forthwith under the power and authority vested in you by said trust deed, by entry, suit, or other appropriate remedy, to take full possession of the railroad and
709 other property conveyed by said trust deed, to the end that all moneys and revenues arising from said railroad may be applied in the manner and for the purpose expressed and authorized in said trust deed.

2. We demand that you proceed by suit in equity to foreclose said trust deed for the payment of the amount due and unpaid on the bonds and coupons secured thereby.

3. We demand that you proceed by suit to compel the cancellation in whole or in part, as the court shall determine, of the interest coupons due on July 1, 1895, on the mortgage bonds held by the Northern Trust Company, in place of which the debentures were issued by reason of the payments heretofore made by the mortgagor, the railroad company, to the holders of the debentures or the Northern Trust Company for them, for interest due on July 1, 1895.

4. We demand that you proceed by suit or other appropriate remedy to compel the application by said railroad company of the income of said railroad since said default in payment of interest to the payment of such amount or amounts as may be due and unpaid on said first-mortgage bonds.

5. We demand that you proceed by suit or other appropriate remedy to prevent the diversion in the future of any part of the income of said railroad to the payment of interest on said debentures before the payment of all interest then due on said first-
710 mortgage bonds or otherwise, in preference to said first mortgage bonds.

6. We demand that you proceed by suit or other appropriate remedy to ascertain the diversons heretofore made by said railroad company of any of the income of said railroad subsequent to said defaults in interest to any purposes not authorized by said trust deed after such default, and to compel the restoration and application of any amounts so diverted to the payment of any amounts due or to become due while such default continues.

7. We demand that you institute the proper suit or proceeding to secure the appointment of a receiver of said mortgaged property, to the end that its income and the other mortgaged property may be applied to the payment of the amount now due on said bonds and coupons, and for the conservation of the property, assets, and franchises of said railroad company, pending the final deermination of any suit for foreclosure or other suit.

The foregoing demands are not made in place of any previous demands by any of the undersigned, but are in addition to such previous demands.

You are hereby notified that, as the holders of 610 bonds secured by said trust deed, we shall hold you and each of you to strict ac-

countability for the discharge of the duties imposod on you by said trust deed, and that in the event of the use or other diversion
711 of any of the income of said railroad, after any default in the payment of interest, to other purposes than the payment of the overdue interest on the first-mortgage bonds of said company, or other purposes not authorized by said trust deed, which you could have prevented or can prevent by the performance of any duty imposed on you by said trust deed, whereby the mortgage debt or any part thereof is left unpaid to our injury as holders of said bonds, we shall hold you and each of you liable therefor.

That you may be properly indemnified against any costs, expenses, or other liability in taking the action demanded, we hereby tender you a bond of indemnity or any reasonable security you may demand and offer a reasonable sum of money to cover immediate costs.

We are ready and willing to produce and exhibit to you, at the office of the Farmers' Loan & Trust Company of New York, the original bonds and coupons and establish our ownership of the same, or we will furnish any other proper evidence you may require of our ownership of said bonds and coupons.

Upon the receipt of this notice and demand you will please advise William Ziegler, 40 Cedar street, New York city, what proof, security, or indemnity you require.

Dated December 23, A. D. 1895.

WILLIAM ZIEGLER,
Owner of 400 *of said Bonds, of the Par Value of* $400,000.

GEORGE CLEVELAND,
Owner of 21 *of said Bonds, of the Par Value of* $21,000.

712 EFFINGHAM H. NICHOLS,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 55 *of said Bonds, of the Par Value of* $55,000.

WILLIAM M. VAN ANDEN,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 50 *of said Bonds, of the Par Value of* $50,000.

CHARLES SMITH,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 15 *of said Bonds, of the Par Value of* $15,000.

JAMES B. RYAN,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 12 *of said Bonds, of the Par Value of* $12,000.

WILLIAM R. PETERS,
By W. ZIEGLER,
His Attorney in-fact, Owner of 13 *of said Bonds, of the Par Value of* $13,000.

JERE JOHNSON, JR.,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 10 *of said Bonds, of the Par Value of* $10,000.

JAMES V. S. WOOLLEY,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 10 *of said Bonds, of the Par Value of* $10,000.

OLIVER A. McMAHON,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 5 *of said Bonds, of the Par Value of* $5,000.

EDWARD ENTWISTLE,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 5 *of said Bonds, of the Par Value of* $5,000.

LAWRENCE E. ELLIS,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 4 *of said Bonds, of the Par Value of* $4,000.

713 LIZZIE WENTWORTH WRIGHT,
By W. ZIEGLER,
Her Attorney-in-fact, Owner of 5 *of said Bonds, of the Par Value of* $5,000.

STEWART L. WOODFORD,
By W. ZIEGLER,
His Attorney-in-fact, Owner of 5 *of said Bonds, of the Par Value of* $5,000.

Schedule of Numbers of said 610 *Bonds.*

Nos.	162, 237, 238, 895, 1116, 1117	6 bonds.
"	1351 to 1354, inclusive	4 "
"	1440 to 1447, "	8 "
"	1481 to 1488, "	8 "
"	1600, 1611 to 1614, inc.	5 "
"	1810, 2016 to 2042, inclusive	24 "
"	2809, 2474, 2551, 2576, 2577	5 "
"	3012 to 3041, inclusive	30 "
"	3044 to 3047, "	4 "
"	3068 to 3080, "	12 "
"	3135, 3136	2 "
"	3143 to 3146, inclusive	4 "
"	3164 to 3167, "	4 "
"	3178 to 3197, inclusive	20 "
"	3782, 3796, 3834, 4068, 4671	5 "
"	4517 to 4537, inclusive	21 "
"	4554 to 4561, "	8 "
"	4581 to 4585, "	5 "
"	4522 to 4533, "	18 "
"	4600 to 4867, inclusive	268 "
"	4904, 4943, 5400, 5401, 7051	5 "
"	7212 to 7356, inclusive	145 "
"	1406, 1407, 1448, 3081, 3082	5 "
	Total	610 bonds.

714 Q. Outside of the demands made by William Ziegler and others in December, just introduced in evidence, and that of William Ziegler in April, 1895, and those in July, 1895, have you received any other demands from any other bondholders than those?

A. No, sir; not that I remember.

SAMUEL H. HARRIS, a witness called on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Knight and testified as follows:

Q. What is your name?

A. Samuel H. Harris.

Q. What is your business?

A. Machinist by profession.

Q. Are you also in the safe business?

A. Manufacturing vault doors, fire doors; some safes.

Q. Are you the holder or owner of some bonds of the Lake Street Elevated Railroad Company?

A. I have a few; yes, sir.

Q. How many?

A. I control thirty.

Q. Have you received any communications from William Ziegler or anybody representing him with reference to those bonds?

A. I have had some correspondence with Mr. Ziegler.

Q. Have you that with you?

A. I have a few letters from him.

Q. Will you let me see them, please?

Objected to by Mr. Burry.

A. I will give them to you if instructed by the court.

715 Mr. KNIGHT: I ask that the witness produce the letters received. With reference to these Lake Street bonds, were they?

A. Somewhat. In a measure relating to my bonds; yes, sir.

Q. Did you also receive from William Ziegler a power of attorney running to him to act for and on your behalf as a bondholder of the Lake Street road?

A. I received a blank. It was a blank not filled out.

Q. Have you that power of attorney with you?

A. No, sir.

Q. Where is it?

A. The blank is at my place of business. It was never executed.

Q. After receiving that power of attorney did you go to any other bondholders in the city of Chicago to endeavor to get them to sign it?

Mr. BURRY: I object. It has nothing to do with the question here involved, which is simply whether my client has complied with the law of Illinois and if we are acting in a manner so grossly in relation to this trust deed that we ought not to be allowed to file a bill. Those are the only two questions—are they capable of acting

and are they guilty of so gross misconduct that they are not worthy of filing a bill?

The COURT: How could the conduct of Ziegler affect the situation?

Mr. KNIGHT: We claim that we have shown already that not a single bondholder ever made any request upon the trustee to
716 act outside of what is known as the Ziegler bonds.

Mr. HERRICK: What you know as the Ziegler bonds; that is all.

Mr. KNIGHT: What we call in the bill the Ziegler bonds. We have shown here a bill filed asking to have turned over to the Lake Street Company 605 bonds, in a bill in which Ziegler and others are made defendants. We show that outside of that 605 bonds not a single bondholder has ever requested either of the trustees to take any action about this mortgage. We propose to show that Ziegler is the only party demanding action under this mortgage.

The COURT: Granted. What does that prove?

Mr. KNIGHT: Then we propose to show that Mr. Ziegler being interested in New York and this trustee being there, we have the right to show all these facts for the purpose of raising the presumption that they are acting at his instigation and not upon the request of the other bondholders and for their interest. It is one link in the chain of evidence; that is all.

The COURT: Do you expect to connect the Farmers' Loan & Trust Company with that fact?

Mr. KNIGHT: With this notice; yes, your honor.

The COURT: That is, that they have been parties to the effort to have Ziegler get these bonds in.

Mr. KNIGHT: I can only prove it in this way, your honor, which I expect to prove, and I am going to put Mr. Burry on the
717 stand in regard to that. I expect to show he has acted in the matter in conjunction with Mr. Herrick, and that Mr. Herrick has been the attorney for Mr. Ziegler in regard to serving these December notices; that Mr. Herrick knew of this power of attorney and was a party to it. It is part of one contention. Mr. Herrick has appeared in the foreclosure litigation in the United States court, and in this case when removed to the United States court, and argued it there. He has been in conjunction with Mr. Burry all through the whole litigation, and Mr. Herrick has admitted he represents these 605 Ziegler bonds.

Mr. BURRY: I suppose we will enter upon an enquiry as to Mr. Judah and his representation and proceedings in all the different suits also.

Mr. KNIGHT: Certainly, if you desire.

Mr. HERRICK: And Mr. Mayer. No bondholder I represent is a party to this suit.

Mr. BURRY: If the court please, this emphasizes the point which I think this case will ultimately turn upon. I don't want to be brought into a contest between the two contending factions of bondholders represented by Mr. Knight and Mr. Herrick. We are an

independent trustee, doing the best we can, and we want to submit this matter to the court.

The COURT: If it can be shown that the Farmers' Loan and Trust Company directly or indirectly became a party to the arrangement by which Ziegler was trying to get these other bondholders
718 to join with him, it is competent as affecting the good faith of the trustee; otherwise it is not competent.

Mr. BURRY: In this connection we wish it distinctly understood that we disclaim acting or refraining to act at the request of any bondholder. We do it without a single request and on our own investigation. That is our position.

The COURT: That does not prevent the other side from showing a contrary state of facts. The objection is sustained unless you will promise to connect the Farmers' Loan and Trust Company with the fact that I have indicated.

Mr. KNIGHT: I want to be fair to the court. I cannot make any direct connection.

Q. You say you own and control thirty bonds?

A. Yes, sir.

Q. Have you ever made any request to the trustee to foreclose this mortgage?

A. Not directly; no, sir.

Cross-examination.

By Mr. HERRICK:

Q. How long have you held those bonds?

A. I think I bought the first four in the summer of 1893.

Q. Without going into details, in what year did you buy the others?

A. I bought four more that year and the balance after the present management of the Lake Street obtained control.

Mr. KNIGHT: In '94, then?

A. After that, during that winter; I think during the winter of 1894 and '5.

719 Mr. HERRICK: Have you put your bonds into the Northern Trust Company under what is called a scaling agreement?

A. No, sir.

Q. Has the interest on those bonds been paid either for July, 1895, or January, 1896, that you hold?

A. No, sir.

Q. Where do you reside?

A. 392 South Halsted street.

Q. How long have you resided in Chicago?

A. I have been in Chicago since 1859.

Q. Did you personally demand the interest on your bonds?

A. Yes, sir.

Q. Both in January, 1896, and July, 1895?

A. Yes, sir.

Q. What is your desire as to whether the Farmers' Loan & Trust Company shall be removed as trustee?
A. I would like to have them retained.

Redirect examination.

By Mr. KNIGHT:

Q. Why?
A. Because I think they are just; trying to promote equity.
Q. Have you talked with Mr. Burry or with Mr. Herrick today about the matter?
A. I have not spoke to Mr. Burry at all. I have had no instructions from either. I have not spoken to Mr. Burry today, that I know of.
Q. Did you yesterday?
A. No, sir.
Q. Did you the day before?
A. No, sir.
Q. Did you speak to Mr. Herrick about it?
720 A. I think I spoke to you since I talked with him.
Q. Answer the question. Have you spoken with Mr. Herrick yesterday or today?
A. I saw Mr. Herrick yesterday; yes, sir.
Q. After you had been notified to appear in this case, wasn't it?
A. Yes, sir.
Q. Where did you see him?
A. I called at his office.
Q. That is in the Portland block?
A. Yes, sir.
Q. Did you tell him then you had been notified to produce letters and the power of attorney from Ziegler?
A. Yes, sir; I did.
Q. And he advised you not to produce them?
A. No, sir.
Q. What did he tell you about it?
A. He didn't tell me anything. I didn't ask his opinion about it, either.
Q. Did you ask anybody in his office?
A. No, sir.
Q. Did you ask anybody's opinion about it?
A. I did.
Q. Who?
A. John L. Manning.
Q. A lawyer?
A. Yes, sir.
Q. When?
A. Yesterday.
Q. Do you remember making an affidavit in the United States court in the foreclosure case?
A. I do.
Q. Where did you make that?

A. I made that in Mr. Herrick's office.
Q. Who was present?
A. I think Mr. Boyesen took the affidavit.
721 Q. Was Mr. Burry there and did he enter into the conversation?
A. No, sir.
Q. Do you know Mr. Burry?
A. I know him by—I called at his office once to make an enquiry in relation to my bonds.
Q. When?
A. Some two or three months ago, I think it was.
Q. After the delinquency had been begun?
A. I don't recollect definitely the dates.
Q. About when?
A. I think it was when we were—previous to the case in Judge Grosscup's court.
Q. How did you come to make that affidavit? Who sent for you?
A. I think I stated the facts myself.
Q. Who sent for you?
A. I volunteered it.
Q. Who sent for you?
A. Nobody sent for me; I called at my own option.
Q. Called where?
A. To Mr. Herrick's office.
Q. At your own option?
A. Yes, sir.
Q. Without notice from anybody?
A. No, sir; I was looking after my interest, if you want to know why I went there.
Q. How long after you had called on Mr. Burry, that you refer to, did you call upon Mr. Herrick?
A. Very soon after, I think.
Q. The next day, wasn't it?
A. It might have been the same day, for all I know.
Q. On the same day, wasn't it?
A. It might have been.
Q. You went from Mr. Burry's office to Mr. Herrick's office?
722 A. Mr. Burry was a total st ranger to me; I saw his name in the paper, and I went to see him as the representative of the Farmers' Loan & Trust Company.
Q. Did he ask you if you would make an affidavit to the effect you did make in the United States court?
A. No, sir.
Q. He did not ask you anything about it?
A. No, sir; he didn't say a word.
Q. Did he ask you how long you had owned your bonds?
A. He would not talk to me at all.
Q. He would not even say good morning to you?
A. Hardly.
Q. Not even good morning?

A. I thought he was hardly civil.
Q. He told you to go to Mr. Herrick, didn't he?
A. He told me Mr. Herrick knew all about it.
Q. You say you bought eight bonds in 1893?
A. Yes, sir; I think so.
Q. How much did you pay for them?

Objected to by counsel for defendants.

A. I don't know whether that is your business. I don't care, though.

The COURT: You may answer then.

Mr. KNIGHT: How much did you pay for the first four bonds?
A. I thought they cost me 72, but I find on looking it up they cost me 82.
Q. 82?
A. 72, rather—they cost me 82, the first four.
Q. The first four cost you 72?
723 A. 82. I thought they did, but on looking up the account I paid 82 for them. I paid Angus and Ginley 82.
Q. You paid it in safes, didn't you?
A. No, sir.
Q. In trade?
A. They owed me cash.
Q. They owed you and you took these in payment?
A. Yes, sir.
Q. You didn't buy them from the company?
A. No, sir.
Q. What did you pay for the next four?
A. I don't recollect exactly; but I didn't pay that any more.
Q. How much?
A. I made an arrangement with the company to take them at 72, if you want the whole story, and Green, instead of giving me the bonds at 72, which he had a right to, for about a thousand dollars, gave me money, and I turned around and bought the bonds, I think, for 65, in order to get even.
Q. That is eight of them. How much did you pay for the other 22?
A. I bought them as cheap as I could. You know what the market was. I bought them on the stock exchange, the other twenty.
Q. How much, if you know?
A. If the court says I must tell I will tell you.
Q. That is what the court says.
A. I don't know.
Q. Wasn't it below 60?
A. I didn't pay any more than I could help, I will guarantee that.
Q. It was below 60, wasn't it?
A. What do you say, Judge?

724 The COURT: If you have any particular objection to telling you don't have to tell. I understood you were going to tell.

A. I think he is going into private matters too much.

Mr. KNIGHT: You decline to state whether you paid over 60 for the balance of the bonds, don't you?

A. (No answer.)

Mr. MAYER: Why don't you tell us what you paid for them?

A. I don't know as it cuts any figure.

Q. You didn't pay over 60 for them, did you?

A. I didn't come here to spend my time for talk.

Q. We have paid you $1.10 for coming here.

A. I have lost more than that a good deal.

Recross-examination.

By Mr. BURRY:

Q. You first came to my office when you saw there were some proceedings taken in court, did you not?

A. Yes, sir; I was watching the papers.

Q. You came in the office?

A. Yes, sir.

Q. I met you near the door and you stated you were a dissatisfied bondholder?

A. Certainly.

Q. I told you I would not take the part of any bondholder, but you could go and see Mr. Herrick if you wanted to; isn't that it?

A. Certainly.

Q. That is what I said?

A. That is practically all that passed.

Q. I told you to go and see Mr. Herrick if you wanted to?

A. Yes, sir.

725 Q. That is the only time you were ever in my office?

A. Certainly. In justice to Mr. Ziegler, I would like to state how that correspondence started.

The COURT: You cannot do that unless you give us the correspondence.

A. I went to Mr. Ziegler. He did not come to me. I was sent by one of your folks, too.

The COURT: It is not material about that.

A. I want it understood Mr. Ziegler has not run after me at all.

Mr. HERRICK: You spoke of Mr. John L. Manning. Is he your attorney?

A. Yes, sir.

Q. How long has he been your attorney?

A. For over twenty years. I keep him to keep me out of lawsuits.

Q. Has he advised you from time to time about these bonds which you own of the Lake Street Elevated?

A. Yes, sir.

Mr. MAYER: I want to put a question to Mr. Knight, counsel for the Lake Street road. Mr. Knight, as is evident to your honor, is

conversant with some of the facts, and he is delicate about taking the witness stand. I would like to ask whether your honor would make a ruling similar to what was made by Judge Tuley, that, as he is an attorney of record, it was not necessary for him to testify. The facts are completely within his own knowledge as to the business relations with Mr. Burry as agent for the Farmers' Loan and Trust Company.

The COURT: That is a matter entirely with counsel.

Mr. MAYER: It is with counsel, also, however, subject to the court's idea of propriety.

726 The COURT: If they are facts that cannot be gotten from any other source, I think it might be the duty of counsel to testify.

Mr. MAYER: I understand that they cannot be obtained from any other source.

The COURT: Otherwise I think it is not good taste.

Mr. HERRICK: I don't know but what I had better go on, too.

The COURT: I have no feeling about it one way or the other, provided you tell the truth when you go on.

CLARENCE A. KNIGHT, called as a witness on behalf of complainant, being first duly sworn, was examined in chief by Mr. Judah, and testified as follows:

Q. Mr. Knight, give your full name.

A. Clarence A. Knight.

Q. Have you been connected with The Lake Street Railroad, the complainant in this case?

A. Yes; since 1893.

Q. In what capacity?

A. As general counsel.

Q. For this Lake Street Elevated Railway Company what, if any business, have you had with Mr. Burry, representing the Farmers' Loan and Trust Company?

A. Since the time of his appointment, in August, 1894, I have had repeated interviews with him concerning matters arising under the mortgage.

Q. Under this trust deed here?

A. Under this trust deed that has been offered in evidence. First, in regard to additional issues of bonds that we wanted for

727 the Humboldt Park property, &c., I met Mr. Burry several times in regard to that, and had interviews with him repeatedly in order to get them to approve of the issuing of those bonds.

Q. Was there any litigation then pending in which he was solicitor or attorney, or was he acting in some other capacity?

A. He was acting in no other capacity than simply as an agent under the mortgage.

Q. Well, proceed then and state what occurred and what was said between you and Mr. Berry.

A. Well, they were simply conversations that we would have, I

on my part representing the company and Mr. Burry representing the other side. We were pressing for the issuing of these bonds in order to raise money to meet the notes that were out, and he required evidence to be submitted to him in regard to the matter.

Q. Was that about the 858 bonds that were issued after the first 6,500?

A. Yes; he had nothing to do with the issuance of the first 6,500.

Q. Was there other matters after this issue of 858 bonds wherein you acted with Mr. Burry under this trust deed in this way?

A. Well, the trust deed only provides that Mr. Burry shall see to the expenditure of the moneys arising from the sale and issue of bonds; but in addition to that there was referred to him our application for the release of the Humboldt Park property.

Q. Referred to him by whom?

728 A. By the Farmers' Loan and Trust Company and the American Trust and Savings bank. I never knew the American Trust and Savings bank had appointed him as agent until after this controversy arose. I always supposed he represented the Farmers' Loan and Trust Company, but it seems now that he was appointed by both trustees; but I never heard that he was appointed by the American Trust and Savings bank until the last two months or three months.

Q. Did he purport to be acting for both trustees or only one?

A. I always supposed and looked upon it as——

The COURT: It is not material what you may have thought about it, I take it.

A. The fact of it is that there was never any other communication sent to the board of directors of the company except this one that has been offered in evidence, that I ever heard of.

Mr. JUDAH: Do you mean the one appointing him agent for the Farmers' Loan and Trust Company?

A. The one appointing him agent for the Farmers' Loan and Trust Company, yes; the communication that has been read here.

Q. Where were these talks and transactions that you speak of with Mr. Burry?

A. In The Temple, in the city of Chicago, Cook county, Illinois.

Q. In The Temple office building?

A. Yes.

Q. Did you have any personal interviews or negotiations with the officers or any of them of the Farmers' Loan and Trust Company?

729 A. Yes; repeatedly after the giving of this mortgage. I went down to New York a great many times concerning matters arising under the mortgage and also concerning the underwriting agreement for bonds.

Q. What, if anything, did they say about Mr. Burry in regard to his authority or duties under the trust deed?

A. Well, I don't remember anything particularly said any further than they looked upon Mr. Burry as representing their interests out here in matters arising under these mortgages in connection with them.

Q. Did they refer you back to him as their agent?

Objected to as leading.

A. I did not have any oral conversation with them.

Q. I will ask another question. In those conversations and negotiations in New York was Mr. Burry referred to?

A. Yes, sir.

Q. By either of the parties?

A. Yes; he was referred to there. I remember one of the letters introduced in evidence speaking about Mr. Burry's absence and in another they referred to him. I think Mr. Burry was at the seashore or somewhere away down there. I think I was in Mr. Turner's office talking about this issue of bonds, and he was expecting Mr. Burry in in a few days, and said he would talk the matter over with him.

Q. What happened in regard to that particular transaction? When did you hear that, rather, and through whom?

A. Well, in the ordinary course of business. I don't know that I referred to it.

730 Q. Was it through Mr. Burry?

A. I don't know whether it was through Mr. Burry or whether it was through Turner, McClure and Rolston.

Q. Were you acquainted with the tangible plant and property of this Lake Street Elevated Railway Company in Chicago at the time the trust deed was executed?

A. Yes, sir.

Q. Briefly stated, what tangible property had that company in the city of Chicago at the time of the execution of the trust deed?

A. Well, it was the owner of the ordinance granted by the city of Chicago on November 24, 1894, authorizing the Lake Street Elevated Railway Company to construct a line of elevated railroad upon Lake street, which had been transferred to the railroad company by ordinance in December, 1892, and under that ordinance the Lake Street Elevated Railway Company had constructed considerable elevated railroad structure leading westwardly upon Lake street. Previous to that the Lake Street Elevated Railway Company had constructed from Canal west to a point, I think, about two blocks from Halsted street, and at that point it was turned over to the railroad company and they continued the construction. Then, after the giving of the mortgage, the railroad company completed the line of railroads which Mr. Louderback has testified about and put it in operation.

Q. And equipped it?

A. And equipped it.

731 Cross-examination.

By Mr. BURRY:

Q. Mr. Knight, you have been a director of this company since its organization, have you not?

Objected to.

A. No. sir.

Q. Haven't you any relation to it now?
A. Yes, sir.
Q. When were you first a director?
A. I think it was in January, 1893.
Q. January?
A. December or January.
Q. And you have been its counsel ever since?
A. Yes, sir.
Q. Now, you had frequent interviews with me concerning the affairs of this corporation down to the day when this bill was filed, had you not?
A. No; the last one was on January 27, 1896——
Q. Well, that was three days before.
A. —in Mr. Mayer's office, where you said nobody had requested you to act except the Ziegler crowd.
Q. I said there, "I am not going to act on the request of anybody," did I not?
A. Yes; going to act on independent account.
Q. Now, the provision in the mortgage under which an agent was appointed was only for the purpose of examining the books of account appertaining to the application and expenditure of the proceeds of bonds, was it not?
A. Arising from the sale of issues over and above 6,500.
732 Q. That is substantially the appointment of an auditor to see that certain proceeds were properly applied?
A. I suppose the instrument will show what was the purpose.
Q. Now, before those bonds were issued and before there were any proceeds, did you not come to me to consult as to whether bonds would be issued by the trustee or not?
A. I think I did. It was after your appointment, I think, Mr. Burry, as agent.
Q. What?
A. It was after your appointment as agent, I think.
Q. Did we not take up the mortgage and examine it as lawyers, carefully, phrase by phrase, to see how many bonds could be issued, and whether they had to be issued at par or not, and whether there was a legal compliance with the prerequisites in order that bonds might be issued?
A. That is correct. This was all after your appointment as agent. I don't think I had any conversation until after that.
Q. In that conversation was I acting as attorney or acting as auditor, to see to the application of the bonds already issued?
A. Well, the way I think all of us regarded your appointment was that you were considered as more the representative of the Farmers' Loan and Trust Company here.
Q. You were a representative——
A. No; whatever there was to do with the mortgage was to be referred to you, and they would do nothing without your concurrence.
733 Q. Wasn't the question of whether the release of the property not used under the mortgage could be legally made referred to me and discussed by us together?

A. I think it was.

Q. Was that done under this appointment to audit certain vouchers?

A. I don't think it was. I think it was done, as we all looked upon it, as the representative of the Farmers' Loan and Trust Company.

Q. As the attorney?

A. No; not as the attorney. We did not suppose——

Q. Weren't you informed, in substance, that all the legal business in Illinois or in the West was to be done on behalf of the Farmers' Loan and Trust Company by me?

A. No; because I don't think, if you had stated that, it would have been hardly true, because I could see that Mr. Herrick and yourself were both acting for the Farmers' Loan and Trust Company.

Q. Where?

A. In the Northern Pacific case.

Q. Did Mr. Herrick ever appear for the Farmers' Loan and Trust Company?

A. It is of record. He appears in the reports as attorney in that case.

Q. For the receiver?

A. Well, you know how receivers are appointed.

Mr. HERRICK: Originally I was representing certain bondholders.

Mr. BURRY: Mr. Herrick was acting for the receiver. Now let me call this to your attention: After the dispute arose, did
734 you not come to me several times to ask whether, under the terms or conditions of the mortgage, a foreclosure of this trust deed would be proper or would be properly made—toward the end of 1895?

A. Oh, I remember, yes, Mr. Burry, that I talked with Mr. Turner, as well as yourself, at the time Ziegler made this October request——

Q. Yes.

A. —and I think I intimated to both of you that certain circumstances might arise where possibly we might all want to foreclose. I couldn't tell——

Q. Did you not come to me and ask, if I filed a bill in foreclosure, in what court I would probably file the bill, and whether or not we would apply for a receiver, and if a foreclosure could not be effected without a receivership?

Objected to by counsel for complainant as leading, a useless expenditure of time, and not cross-examination. Objection overruled.

A. I think that conversation was after—after some request was made by Ziegler——

Q. You think it was?

A. —and when you intimated to me that you had had a talk with Mr. Herrick and discussed this whole question you referred me then,

in that conversation, to the Philadelphia case and the Northern Pacific case——

Q. At that conversation?

A. —and said that you had discussed the whole matter with Mr. Herrick, and I felt that you were acting in connection with Mr. Herrick and was going to try and "do us up," in the language
735 of the boys, and, if I could do anything to keep you out, I was going to do it.

Q. At that conversation did you not ask my advice as to whether it would be better to bring these outstanding bondholders into the combination by foreclosure or by simply declining to pay any further interest until they came in, which would be cheaper? Did you not ask that question and ask my advice on that question?

A. I don't know whether I asked your advice upon the question, Mr. Burry, but I think there was some talk that if you were going to foreclose and bound to do it I wanted an intimation of whether you were going to charge the usual $25,000 fee for foreclosing, and I wondered if it wouldn't be cheaper for us to pay the interest and be done with it.

Mr. JUDAH: Did Mr. Burry send you a bill for his advice?

A. No; he has not.

Mr. BURRY: Wasn't the conversation as to whether these outstanding bondholders could be disposed of easier by a foreclosure bill, and in that connection did you not ask me to compromise the case if you would pay the master's fees, the receiver's fees, and the attorneys' fees?

A. I think you did suggest, when I come to think about it, that it would be cheaper for us to have a foreclosure, and it would be a very easy thing to do, without any receiver, and we would have it all wound up in about six months, and in that way we might clean out all the minority bondholders. I think that is the way. You suggested it, Burry.

736 Q. Did you not state also that if you adopted one or the other of these courses the minority bondholders would have to go into the scaling arrangement?

A. Well, I think we talked on the point that if we wanted to force the minority bondholders into line that we would get it about as cheap by foreclosing as we could any other way.

Adjourned until 10 o'clock a. m., Wednesday, May 6, 1896.

MAY 6TH, 1896—10 00 a. m.

Court met pursuant to adjournment; whereupon the examination of the witness D. H. Louderback was continued by Mr. Knight as follows:

Mr. KNIGHT: We desire to offer in evidence, if the court please, the letter of January 28th, 1896, to Mr. Burry, and also one of January 27th, 1896, to Mr. Burry, both signed by Mr. Louderback, president of the Lake Street Elevated Railroad Company, together with the statement attached to the letters to Mr. Meyer.

Said two last-mentioned letters and statement were thereupon read

in evidence by counsel for complainant and are respectively as follows, to wit:

"CHICAGO, ILLINOIS, *January 28th*, 1896.

William Burry, city.

DEAR SIR: We hand you herewith a statement of our re-
737 sources and liabilities December 31st, 1895. We have shown the real estate at its costs according to our books, but say that we reduce it fifty per cent., it would still leave the company in very good condition. This real estate could be released and sold as soon as possible, if there is any way that the trustees can allow this to be done; the money to be deposited in the American Trust & Savings bank, to be used in acquiring outstanding bonds of the company in accordance with the mortgage or acquiring other property that might be necessary.

This real estate is earning the company nothing; costing it heavily in taxes and interest on deferred payments, which, if not paid, will be foreclosed by the mortgagor.

As long as the company does not handle any of the money (it being left entirely with the trustee for the benefit of the bondholders) is it not possible for them to release the property as sold?

Yours very truly,

D. H. LOUDERBACK, *President.*"

"CHICAGO, ILL., *January 27th*, '96.

Mr. Burry, Chicago, Ill.

DEAR SIR: We hand you herewith a statement of the
738 accounts receivable and bills payable of the Lake Street elevated road, December 31st, 1895, and also a copy of this and last year's annual report, which speak for themselves.

In considering any foreclosure proceedings we desire you to understand that in case they were begun it would prevent us at once from securing the balance of the money due from the Union Elevated Railroad Company and prevent the completion and operation of the electric equipment on the Lake Street road, as the Union Elevated Railroad Company would not be in position to go on with its payment until after its foreclosure suit and the court had passed upon the contract between the two companies as to whether it should be maintained by the Lake Street road.

This would be a loss to the bondholders, as they derive all the benefit from the securing of this money in the additional equipment and in reducing the contract obligations, which would have to be met by them in case of foreclosure to properly operate the road.

If time is given the road they not only secure this money, but also the entire earnings, and have everything to gain by waiting, as none of their rights can be taken away from them, while precipitant action will entail great loss.

Since December 31st the American Trust & Savings bank have
739 been authorized and have cancelled $29,125 of the January 1st, 1895, coupons, so that unpaid coupons would be reduced to that extent.

Yours very truly,

D. H. LOUDERBACK, *President.*"

(The following are the statements attached to the letter last above referred to:)

"*Bills Payable.*

Illinois Trust and Savings bank	$39,000.00
American Exchange	75,000.00
Illinois Trust & Savings bank	36,000.00
Columbia Construction Company	96,000.00
W. F. Furbeck	25,000,00
A. L. Dewar & Company	65,000.00
A. L. Dewar & Company	5,000.00
A. L. Dewar & Company	25,000.00
Northern Trust Company	50,000.00
A. L. Dewar & Company	50,000.00
Garden City Banking & Trust Company	50,000.00
First national bank	25,000.00
Northern Trust Company	25,000.00
M. C. McDonald	5,500.00
	$571,500.00

740 *Accounts Receivable, etc.*

Price Baking Powder Co.	$187.50
City of Chicago	133.24
A. D. Telegraph Co.	15.90
M. H. Alberger	29.20
C. J. McGuire	10.00
Union Paint & Varnish Co.	6.10
Rhode Island locomotive works	30.00
Underwood & Green	105.92
National Conduit Manufacturing Co.	200.00
J. J. Monaghan	10.60
Fidelity & Casualty Co.	35.93
Chicago Telephone Company	39.60
Circuit court of Cook county	5,000.00
Union Elevated R. R. Co.	316,886.40
A. T. & S. Bk. trust fund	5,600.00
R. Laughlin, Tr., add'l mile debentures, etc.	18,750.00
Escrow acc't Clayton E. Crafts	1,000.00
City of Chicago, cash deposits	3,000.00
Lake St. Elevated R. R. Co. 5% bonds, sp'l	74,206.45
" " " R'y Co. stock	3,915.40
C. A. Knight, trustee	2,231.80
52nd St. station, reserve	471.97
W. W. Downs	77.00
Columbia Construction Co.	15.00
Uniforms and bonds from employés	735.90
	$432,693.91
Less bonds borrowed from R. Laughlin, treasurer, ac.	18,653.16
Total	$414,040.75

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Resources.		*Liabilities.*	
Acc'ts receivable.....	$414,040.75	Encumbrances on real estate.....	$69,792.66
Bonds in treasury.....	101,000.00	Bills payable.....	571,500.00
Debenture bonds in treasury.....	166,200.00	Vouchers and pay-rolls..	40,478.32
Income bonds in treasury.....	41,500.00	Taxes	14,000.00
Scrip in treasury.....	50.00	Coupons unpaid.....	277,805.00
Real estate, Humboldt Park and other places, not used for R. R. purposes	407,000.00	Reserve for 52nd St. station	20,000.00
		By balance	136,214.77
	$1,129,790.75		$1,129,790.75
Cr. balance.....	$136,214.77"		

We also desire to offer in evidence the injunction writ issued in the case of the Lake Street Elevated Railroad Company to the Farmers' Loan & Trust Company in this case.

(Said injunction writ was thereupon read in evidence by counsel for complainant and is as follows, to wit:)

742 STATE OF ILLINOIS, } *ss.*
Cook County, }

The People of the State of Illinois to the Farmers' Loan & Trust Company and your attorneys, solicitors, agents, and servants, and to each and every of them, Greeting:

Whereas it hath been represented to the honorable the judges of the superior court of Cook county, in the State aforesaid, on the part of The Lake Street Elevated Railroad Company, complainant, in its certain bill of complaint exhibited before said judges and filed in said court against you, the said The Farmers' Loan & Trust Company, The American Trust & Savings Bank, and The Northern Trust Company, among other things, that you are combining and confederating with others to injure the complainant touching the matter set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience, and Honorable —— ——, one of said judges, having under his hands endorsed upon said bill an order that a writ of injunction issue out of said court, according to the prayer of said bill:

We therefore, in consideration thereof and of the particular matters in said bill set forth, do strictly command you, the said The Farmers' Loan & Trust Company, and the persons before mentioned and each and every of you that you do absolutely desist and refrain from the Farmers' Loan & Trust Company taking any proceeding or bringing or prosecuting any suit or suits or acting in any
743 manner whatsoever under and by virtue of the terms and provisions and conditions of mortgage or deed of trust of April 7th, 1893, made by the Lake Street Elevated Railroad Company and the American Trust & Savings bank, until this honorable

court, in chancery sitting, shall make other order to the contrary. Hereof fail not, under penalty of what the law directs.

To the sheriff of said county, to execute and return in due form of law.

Witness Stephen D. Griffin, clerk of said court, and the seal thereof, at Chicago aforesaid, this 30th day of January, A. D. 1896.

[Seal of Superior Court of Cook County.]

STEPHEN D. GRIFFIN, *Clerk.*

Received a copy of the within at 11.10 o'clock January 30th, 1896.

WM. BURRY.

The COURT: That is the circuit court case, isn't it?

Mr. KNIGHT: No; it is this case.

Mr. BURRY: It is a part of this case.

Mr. KNIGHT: Together with the receipt of the acknowledgment by Mr. Burry, January 30th, 1896, at 11.10 o'clock a. m.

It is agreed, your honor, that the Farmers' Loan & Trust Company filed a bill in the United States circuit court of the northern district of Illinois to foreclose the mortgage we offered in evidence from the Chicago & Northern Pacific Railroad Company to the Farmers' Loan & Trust Company on October 10, 1893.

744 Mr. MAYER: I will offer a little formal proof while Mr. Knight is looking for some papers. I have shown these letters to Mr. Burry. They are correspondence between Mr. Louderback and myself following that interview which occurred in our office, which has already been referred to.

Mr. BURRY: Objected to as immaterial.

Mr. MAYER: I have here a package of letters written by the American Trust & Savings bank, which I would like to refer to, your honor, addressed to Mr. Burry. I would like to read this one letter, which is dated January 28th, 1896:

"At the adjournment of the conference held yesterday noon at the office of our counsel, at which were present yourself, Mr. Louderback, Judge Moran, Mr. Mayer, and myself, you stated on behalf of your client that you would proceed to file a bill to foreclose the mortgage, and asked that I should promptly inform you whether this bank would join in the bill. I stated that we would take the matter under further consideration, make additional investigation, and give you a speedy answer. Accordingly, I now desire to state that, aided by our attorneys, we have given the subject still further careful deliberation and investigation, and, without going into the reasons, now give you our conclusions, and they are these:

First. Under the trust deed and existing circumstances, it is not the legal duty of the trustees to file a bill to foreclose the mortgage.

745 Second. In the absence of such legal duty and in view of all of the provisions contained in the trust deed and the facts—an important one of which is that a very large majority of the outstanding bonds is opposed to any action of the kind you contemplate—

we deem it an equitable, fair, and proper exercise of our discretion to decline at the present time to join in a proceeding to foreclose the mortgage."

Now, there are a number of letters which have passed between the parties, none of which I have had time to show the counsel. They have just been handed to me, and I don't think it is necessary to read them, but they show the correspondence and the interchange of views and advice between the trustees as to what should be done under the trust deed as to how the insurance should be effected and made payable and how the moneys which were realized on the bond-which were certified to should be applied under the provisions of the trust deed. I have given the substance of perhaps forty or fifty letters, your honor, which we will introduce without reading.

(Thereupon the letters last referred to by counsel for defendant American Trust & Savings Bank were read in evidence by said counsel, and are respectively as follows, to wit:)

"NEW YORK, *May 4th*, 1894.

The American Trust & Savings Bank, J. R. Chapman, Esq., secy., Chicago, Ill.

DEAR SIR: On page 19 of the mortgage of the Lake Street
746 Elevated R. R. Co. it provides that the property is to be reasonably insured against loss by fire, &c., and that the policies are to be made payable to and delivered to the trustees.

Please let us know if anything has been done regarding this.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

"NEW YORK, *February 12th*, 1894.

G. B. Shaw, Esq., president American Trust & Savings bank, Chicago, Ill.

DEAR SIR: Your letter of the 8th inst. received enclosing copy of requisition of the Lake Street Elevated R'y Co. for $8,762.82 for work done.

We note that you have drawn upon us for $2,920.94, which amount has been paid.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

747 "NEW YORK, *30th Oct.*, 1893.

G. B. Shaw, Esq., pres't the American Trust & Savings bank, Chicago, Ills.

DEAR SIR: Yours of 27th instant received with requisition and $32,000 draft duly honored.

Yours very truly, WM. H. LEUPP, *V. P.*"

"NEW YORK, *September* 26, 1893.

G. B. Shaw, Esq., president American Trust & Savings bank, Chicago, Illinois.

DEAR SIR: Your letter of 23rd inst. received enclosing requisition No. 9 in the matter of the Lake Street Elevated R. R. Co. for $120,000, of which we note you have drawn upon us for our proportion, being $40,000, draft of which will be honored upon presentation.

Yours very truly,
THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

748 "NEW YORK, *August* 25, 1893.

G. B. Shaw, Esq., president American Trust & Savings bank, Chicago, Ill.

DEAR SIR: Your letter of the 21st inst. received, enclosing requisition No. 7 and requisition No. 8, for work done and money expended on the Lake Street Elevated R. R. Co., and we note that you have drawn upon us for our proportion of the said payments, being $45,000.

We are unable to pay the said draft, in consequence of not having sufficient funds.

Mr. Ziegler's representative has not as yet paid in the amount of money which you mention.

Yours very truly,
THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

"1.52 P. M., *August* —, 189–.

Received at 164 Washington St., Chicago.
Dated New York, 10.

To American Trust & Sav. bank:

We will pay requisition for twenty-seven thousand dollars.
THE FARMERS' LOAN & TRUST CO."

749 "NEW YORK, *Aug. 7th*, 1893.

G. B. Shaw, Esq., pres't American Trust & Savings Co., Chicago, Ill.

DEAR SIR: Referring to a receipt dated May 9, 1893, for $104,760, being payment of 20 % of purchase by Messrs. Moffett, Hodgkins & Clarke of $582,000 first-mortgage five per cent. gold bonds of the Lake Street Elevated Railway Co., which receipt was assigned to your company and which receipt we were to hold for your order and account, with instructions to endorse upon the said receipt various payments received from time to time from Messrs. Moffett, Hodgkins & Clarke, we beg to inform you that our statement made to you that the said receipt had been credited with $32,040 and the said amount has been placed to the account of the American Trust & Savings bank, account $2, and which amount was subject to your

draft, we find that an error has occurred through a misunderstanding with Mr. Moffett, and that instead of a credit of $32,040 it should be $16,020, and that the balance of the receipt should be $88,740. The $16,020 should have gone to the credit of account $1. Will you kindly return to us a check for $16,020, so that it may be credited to account $1, which, together with the amount to the credit of account $1, being $35,480.94, would make a total of $51,480.94 applicable to be drawn upon by requisition and your draft.

750 It might be well for you to obtain the requisition and forward it to your correspondent for collection, and at the same time send to us, through them, a draft in our favor for $16,020, to be paid over to us by your correspondent at the same time that we pay your draft of $51,480.94.

Awaiting your response in this matter, we remain yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

"NEW YORK, *July 19th*, 1893.

G. B. Shaw, Esq., president American Trust & Savings bank, Chicago, Ill.

DEAR SIR: Your letter, requisition, and draft for $90,000 in the matter of subscription for Lake Street Elevated R. R. Co. bonds has been received and draft honored.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

"NEW YORK, *June* 8, 1893.

G. B. Shaw, Esq., president the American Trust & Savings bank, Chicago, Ill.

751 DEAR SIR: Your letter of 6th inst. received, enclosing requisition made upon you in the matter of the Lake Street Elevated R'y Co., and you state that you have drawn upon us for $171,000.

Having paid your draft for $184,500 yesterday morning, we now return this requisition and ask that the other requisition be sent to us in lieu of this.

We explained to the Bank of the Republic that the draft for $184,500 would be paid in a day or two, and they therefore agreed to hold the draft until yesterday morning, when it was presented and paid, and we requested them to telegraph you at once.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

(Enc.)

"NEW YORK, *June 3rd*, 1893.

G. B. Shaw, Esq., Pt. American Trust & Savings bank, Chicago, Ill.

DEAR SIR: Your duplicate requisition from the Lake Street Elevated R'lroad Company for $410,000 received today at 12.30 p. m.

We return the same and request that you endorse upon the
752 same 'This voucher paid in full this — day of ——, 1893.
American Trust & Savings Bank, by ————, president.'

This is the form agreed to and appears on requisition No. 1.

Your draft for $184,500 was not paid, as it was in excess of the amount paid in. We will wire you the amount on Monday to draw for, and have requested the Bank of Republic to hold draft and write you.

Yours very truly, W. D. SEARLS, *V.-Pt.*

We will probably have sufficient to meet draft by Monday."

"NEW YORK, *July 2nd*, 1894.

G. B. Shaw, Esq., president the American Trust & Savings bank, Chicago, Ill.

DEAR SIR: Your letter of 30th ult. received.

The Bank of Republic has deposited with us $30,000 for credit of the coupon account of the Lake Street Elevated R. R. Co.

We note that when this is consumed we are to wire you of the excess paid each day, when you will remit to us the amount
753 To all of which we will give our attention.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V.-P.*"

"NEW YORK, *July* 27, 1893.

G. B. Shaw, Esq., president the American Trust & Savings bank, Chicago, Ill.

DEAR SIR: Your instructions of the 24th inst. received, and in accordance therewith we have this day set aside for delivery to New York subscribers bonds Nos. 3001–3250, both inclusive.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V.-P.*"

"NEW YORK, *July* 25, 1893.

American Trust & Savings bank, Chicago, Ill.

GENTLEMEN: As requested by Messrs. Knight & Brown, of your city, we herewith send you copy of list of sub-subscribers charged against the Moffett, Hodgkins & Clarke Co. subscriptions and
754 the John F. Moffett subscriptions to the Lake Street bonds showing the payments made on the same.

Kindly acknowledge receipt and oblige,

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

"NEW YORK, *July* 21*st*, 1893.

G. B. Shaw, Esq., president the American Trust & Savings bank, Chicago, Ill.

DEAR SIR: We have this day forwarded by express one package addressed to your company and containing $500,000 Lake Street Elevated R'l R'd Co. bonds Nos. 2500–3000, for $1,000 each, with July, 1893, coupon on; also cancelled coupon due July, 1893, from bonds 1250–1500.

Please send us order for more bonds, as we have exhausted our supply for delivery to subscribers.

Yours very truly, W. D. SEARLS, *V. P.*"

"NEW YORK, *June* 24, 1893.

G. B. Shaw, Esq., president American Trust & Savings bank, Chicago, Ill.

755 DEAR SIR: Herewith we hand you stock certificate No. 63 of the Lake Street Elevated R. R. Co. for 25 shares for transfer to Winslow Warren and G. Arthur Hilton, trustees of the estate of Samuel C. Colt.

Please send new certificates to G. Arthur Hilton, No. 50 State street, room 75, Boston, Mass., and oblige,

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

(Enc.)

"NEW YORK, *June* 9, 1893.

American Trust & Savings bank, Chicago, Ill.

GENTLEMEN: Your letter of 6th inst. received, enclosing 69 certificates of stock of the Lake Street Elevated R. R. Co., for which accept our thanks.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. H. LEUPP, *V. P.*"

"NEW YORK, *September* 13, 1893.

G. B. Shaw, Esq., president American Trust & Savings bank, Chicago, Ill.

DEAR SIR: Herewith we hand you 242 Lake Street
756 Elevated coupons, $25 each..... $6,050
which has been paid by us.

We drew on you formerly for..... ..... $5,925
and have this day drawn for the balance..... 125

Kindly acknowledge receipt for the same and oblige,

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

(Enc's.)

"NEW YORK, *July* 3, 1893.

G. B. Shaw, president American Trust & Savings bank, Chicago, Ill.

DEAR SIR: Your letter of 29th ult. received, in relation to the payment of coupons of the Lake Street Elevated R. R. Co.

We would prefer to draw upon you daily for amounts paid than to let it run to the end of the week.

We have consequently drawn upon you today for $5,925, being the amounts paid upon 237 coupons at $25 each.

The coupon numbers are 41–45, 81–258, 981–1000.

There is no money to the credit of your account No. 2 and which would be available to charge these coupons to.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

757 "NEW YORK, *July* 24, 1893.

J. R. Chapman, Esq., cashier the American Trust & Savings bank, Chicago, Ill.

DEAR SIR: Your letter of 20th inst. received, enclosing the following stock certificates for William Ziegler and his co-scribers, viz:

No. 341, Effingham H. Nichols	100	shares.
342, Cornelius N. Hoaglund	100	"
343, William M. Van Anden	100	"
344, Oliver A. McMahon	10	"
345, James V. Ryan	24	"
346, George Cleveland	42	"
347, Charles Smith	40	"
348, Jere. Johnson, Jr	40	"
Total	456	"

You state that this will make a total for William Ziegler and his cosubscribers of 880 shares.

We figure that it is 1,000 shares, being a difference of 120.

You probably have omitted 20 shares for N. W. Noxon,
80 " Edward Loeb,
20 " J. W. S. Woolley,
which are part of Ziegler's subscription.

If you find this any different kindly advise us and we will check off again.

We received in the first lot, together with Moffett, Hodgkins & Clarke's, 320 shares.

The next delivery was	224	shares.
Present delivery	456	shares.
Total	1,000	"

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

758 "NEW YORK, *Nov'r 20th*, 1893.

W. P. *Ropf*, Esq., ass. sec'y American Trust & Savings bank, Chicago, Ill.

DEAR SIR: We have certified and sent to your address 985 Lake Street Elevated R'l R'd Co. bonds of $1,000 each, $985,000, and numbered 3516–4500, viz:

Nov. 13, '93.	No. 3516–3750.....	$235,000
" 14,	3750–4000	250,000
" 17,	4001–4250.....	250,000
" 20,	4250–4500.....	250,000

We will retain No. 4500–5000 for our use here.

Yours very truly, W. D. SEARLS, *V. P.*"

"NEW YORK, *July* 24, 1893.

G. B. Shaw, Esq., president American Trust & Savings bank, Chicago, Ill.

DEAR SIR: We have this day forwarded to you per express one package valued $100, containing Lake Street Elevated R. R. Co. bonds, Nos. 3251–3500, both inclusive, for $1,000 each, $250,000, with coupon of July, 1893, on.

759 We also send you July, 1893, canceled coupon from bonds Nos. 3001–3250, both inclusive, $250,000, which we are using for delivery to New York subscribers to bonds.

Kindly send us an order to deliver to ourselves the 250 bonds and oblige,

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*

(Express; value, $100.)"

"NEW YORK, *December 28th*, 1893.

American Trust & Savings bank, Chicago, Ill.

GENTLEMEN: We have this day forwarded to you per express two packages, each containing 250 Lake Street Elevated R. R. Co. bonds, Nos. 5251–5500 and 5500–5750, both inclusive, certified by us as trustee.

Kindly acknowledge receipt of the same, and also advise us as to paying coupons on the 2nd, proximo.

We have on hand applicable to the payment of coupons about $3,300, being accrued interest on bonds delivered to subscribers.

You had better wire us in relation to this matter if your letter would not reach us by the 2nd, proximo.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By W. D. SEARLS, *V. P.*"

(Express.)

760 "NEW YORK, *January 8th*, 1894.

American Trust & Savings bank, Chicago, Illinois.

GENTLEMEN: We herewith enclose coupon due July, 1893, for $25, from bond No. 46, which we have paid. Kindly reimburse us for this amount.

We have forwarded to you this day by express one package containing bonds Nos. 5751–6000, both inclusive, and will forward the balance as soon as they can be certified.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By WM. H. SEUPP, *2nd V. P.*

(Enc.)
(Bonds for express.)"

Mr. KNIGHT: It is admitted, your honor, that the Farmers' Loan and Trust Company is a corporation organized under the laws of the State of New York and authorized under said laws to accept trusts such as these under the trust deed introduced in evidence in this case, running from the Lake Street Elevated Railroad Company to the American Trust & Savings bank and the Farmers' Loan & Trust Company.

That is all, your honor.

Mr. BURRY: We object to all these letters offered by Mr. Mayer on the ground that they are immaterial. They relate, as he says, to correspondence between the two trustees two or three years back.

761 Mr. MAYER: The first mortgage which is released, as the evidence shows, was also to the Farmers' Loan & Trust Company, and this new mortgage made by the railroad company was a mortgage upon the same property and additional property with enlarged powers, and these letters or some of them refer to that matter, and there are letters here in reference to the insurance; all of them have to do with the *res gesta* of this question.

The COURT: If the statement of counsel as stated is true I think they ought to be admitted.

Mr. KNIGHT: It is agreed, your honor, that it may be considered in evidence the special charter of the Farmers' Fire Insurance & Loan Company, being chapter 50 of the Laws of 1822 of New York, and also amended by chapter 240 of the Laws of 1822, and in 1836 again amended. In that year the name was changed to the Farmers' Loan & Trust Company as it is at present known. Original charter also amended in 1852; also by the Laws of 1860; also by the Laws of 1868, and also by the Laws of 1884. It is stipulated between the parties hereto that the above laws, as printed in the printed volumes of New York statutes, may be referred to by either party the same as if set out at length herein.

Mr. BURRY: We offer some documentary evidence on behalf of the Farmers' Loan & Trust Company.

The COURT: Proceed.

762 D. H. LOUDERBACK, recalled as a witness on behalf of the defendant The Farmers' Loan & Trust Company, in rebuttal, testified as follows:

Direct examination by Mr. BURRY:

Q. Have you stated at any time that the Lake Street Elevated Railroad Company was going to pay all its unsecured indebtedness before it paid its bonded indebtedness?

A. No, sir; on the contrary——

Q. Now, that is all; just wait. Did you ever state in an affidavit as follows: "Affiant further states that it is expected if said Lake Street Elevated Railroad Company receives from said Union Elevated Railroad Company the payment to be made as aforesaid, and realizes from the sale of property remaining in the Humboldt Park line, and its traffic continues at the present rate, that it will be enabled during the coming year to pay and discharge all the floating liabilities against said company, namely, those outside of its bonded indebtedness, or will provide for the same in a manner satisfactory to the stockholders and bondholders of the said railroad
762½ company." Did you make such a statement as that in an affidavit?

A. I think I did. The bonded indebtedness, however, refers to the property——

Mr. BURRY: Never mind.

A. Well, I want to explain what I mean by that statement. That was the principal, and not interest.

Mr. BURRY: Now, you will have an opportunity to explain as much as you want to later.

Q. Did you ever state that the Lake Street Elevated Railroad Company is paying, as they mature, all of its current bills and obligations, or providing for the same until said company can get in such financial condition that eventually they will all be wiped out with the exception of the bonded indebtedness, as aforesaid?

A. Yes.

Mr. HERRICK: In your testimony yesterday you referred to an agreement between the Lake Street Elevated Railroad Company and the Northwestern Elevated Railroad Company by which the Northwestern Elevated Railroad Company was to guarantee the debentures issued by the Lake Street Elevated Railroad Company to which you referred in your testimony. I show you a paper executed by the Lake Street Elevated Railroad Company and the Northwestern Elevated Railroad Company, dated the 18th day of June, 1895—contract, rather—and ask you if that is the contract you refer to.

A. Yes.

Mr. HERRICK: We offer this contract in evidence.

763 (Said last-mentioned contract was thereupon read in evidence by counsel for defendant The Farmers' Loan & Trust Company, and was as follows, to wit:)

"*Contract.*

The Lake Street Elevated Railroad Company
with
Northwestern Elevated Railroad Company.

This agreement, made this 18th day of June, 1895, by and between the Lake Street Elevated Railroad Company, of Chicago, Illinois (hereinafter called 'Lake Street Company'), party of the first part, and Northwestern Elevated Railroad Company (hereinafter called 'Northwestern Company'), party of the second part, both parties being corporations created and existing under and by virtue of the general railroad laws of the State of Illinois, witnesseth:

That in consideration of the mutual undertakings hereof, it is hereby agreed between the parties hereto as follows, viz:

SECTION 1. That said Northwestern Company shall have, and is hereby given and granted, the right to use the double-track elevated railroad which first party is authorized and proposes to construct and operate on Lake street, Chicago, Illinois, from the west line of Fifth avenue to the east line of Wabash avenue, or so much thereof as may be constructed and put in operation by said Lake
764 Street Company, together with all the depots and terminal facilities, turnouts and switches of the party of the first part, located east of the west line of Fifth avenue on said Lake street, for and during the life of the ordinance rights of said Lake Street Company on said portion of said Lake street, and extension or extensions thereof, and also the like use of any extension of said line of road either eastwardly on Lake street or southwardly on Wabash avenue. Such use to be in common with that of said Lake Street Company, and for the purpose only of operating the cars, motors and engines of said Northwestern Company, and each party to use said tracks, railroad depots, terminal facilities, etc., in such manner as not to unnecessarily inconvenience the other party hereto in the operation of its road and business: each party hereto hereby agreeing that it will to the best of its ability deliver, at their joint depots, to the other all such passengers on and from its lines as desire transportation into the territory of the other, using all fair diligence so to do.

Said portion of said Lake Street Company's road so to be used as aforesaid jointly shall be operated as one line, each party hereto to pay one-half of the expense of maintaining the depots and ticket office thereof, and one-half of the insurance and taxes, assessments and repairs thereupon, and to receive one half of the returns coming from others during the life of this contract for use thereof, and each party hereto to indemnify and hold harmless the other
765 from and against damages to persons and property arising from the operation of its trains and each party hereto to pay one-half of any damages awarded to property on account of the construction and operation of such line of road from the west line of Fifth avenue eastwardly upon Lake street. The amount of taxes and assessments to be paid by said Northwestern Company here-

under are to be arrived at by fair and ratable adjustment each year.

SECTION 2. That as and for the consideration to said Lake Street Company for the above grant and license said Northwestern Company has promised and does hereby covenant and agree that it will, in writing, guarantee the payment of the principal and interest of such number of the five per cent. gold debentures of said Lake Street Company which it is about to deliver or may hereafter deliver to its bondholders as against their bonds, under that certain plan of adjustment outlined in the instrument of trust dated March 1, 1895, running from said Lake Street Company to the Northern Trust Company, of Chicago, and now on file with said trust company, the principal of the debentures so to be guaranteed not to exceed the sum of $4,484,400.00.

SECTION 3. That if under said plan of adjustment said debentures after being guaranteed as aforesaid, are cancelled and exchanged, in whole or in part, for the first-mortgage bonds of said Lake Street Company, then for all of the debentures so cancelled the Northwestern Company will promptly, in writing, guarantee the
766 payment of the principal and of the interest of a like amount of said bonds.

SECTION 4. If the now existing contracts between said Lake Street Company and the Union Elevated Railroad Company are carried out and do not become non-effective under the provisions thereof, then and in that case this contract shall as to the use and maintenance of said Lake Street Company's road and plant lying east of the west line of Fifth avenue on said Lake street, be subject and subordinate to the said contracts with said Union Elevated Railroad Company, but, nevertheless, said Northwestern Company shall not thereby be released or discharged from its undertakings in sections 2 and 3 above made and provided for.

SECTION 5. Said Lake Street Company hereby covenants and agrees that it will indemnify and hold said Northwestern Company, its successors and assigns, harmless from the payment of the principal and interest of the debentures and bonds which shall be guaranteed by it in pursuance of this contract, and that it will, semi-annually, on the respective interest-payment days, turn over to the Northern Trust Company of Chicago, as trustee, up to an amount sufficient to meet its respective interest payments below named, its net earnings over and above all expenses of the operation and maintenance of its lines, property and plant, its taxes, insurance, and all interest payable by said Lake Street Company, in trust, to be paid and applied to the payment of the interest
767 due and to become due upon such of said debentures and bonds as shall be guaranteed by second party hereto.

SECTION 6. As and for a further consideration to said Lake Street Company for this contract and the benefits hereof, said Northwestern Company hereby further agrees that if the said contracts between the said Lake Street Company and said Union Elevated Railroad Company become non-effective under their terms, then said Northwestern Company will, when and as soon as said Northwestern

Company shall enter upon the use of said Lake Street line of road from west line of Fifth avenue eastwardly, or any part thereof, reimburse and pay to said Lake Street Company the following sums of money, viz:

(*a.*) One-half ($\frac{1}{2}$) of all sums of money which shall have been expended by said Lake Street Company, or for which it shall have become obligated, in securing frontage consents for its road between Fifth avenue and the east line of Wabash avenue, and of such further sums of money as shall have been expended by said Lake Street Company for rights of way in said portion of said street, and for other privileges matters and things justly chargeable to that part of its right of way in said Lake street, with interest on said one-half at 5% per annum from the dates of respective original payments.

(*b.*) One-half of the sum of fifty-five thousand dollars ($55,000) expended by said Lake Street Company, under its contract with the Phœnix Bridge Company, in putting in the structural foundations for the East Lake Street line, and interest on said one-half of said $55,000 at five per cent. (5%) per annum from the time of payment of said $55,000 by said Lake Street Company up to the time of the user by said Northwestern Company above mentioned.

768 (*c.*) One-half of all the other cost and expense of said Lake Street Company under its said contract with said Phœnix Bridge Company of completing its road on Lake street from the west line of Fifth avenue east, including all interest paid by said Lake Street Company on such one-half of such other cost and expense from the dates of respective payments by said Lake Street Company up to the aforesaid time of user by said Northwestern Company.

(*d.*) One-half of the expense of acquiring the right to build and building any extension of said Lake Street line eastwardly on Lake street from Wabash avenue or southwardly on Wabash avenue subject to the right of user of such extensions by both parties hereto on the same terms and conditions as those herein provided for the use of the Lake Street line.

If under the terms hereof any of the above-mentioned sum of money should be paid by said Northwestern Company to said Lake Street Company, and thereafter under said contracts of said Union Elevated Railroad Company with said Lake Street Company, the latter should be reimbursed for the same by said Union Company, then the Lake Street Company shall repay and reimburse the Northwestern Company for the one-half which the latter shall have paid hereunder, and for which the said Union Company shall so have made payment.

SECTION 7. It is further agreed between the parties hereto that in case any matter of difference shall arise under this contract or agreement, and the parties hereto cannot agree as to the same, that such matters shall be settled and determined by a board of three arbitrators, each of the parties hereto to choose one, and the two so chosen a third, and the decision of said three arbitrators, or any two

of them, so chosen, shall be final and binding as to such
769 matters so in controversy. Each of the parties hereto to serve a written notice upon the other within ten (10) days, giving the name of the arbitrator chosen by it, and the two so chosen shall within ten (10) days choose the third, and said three arbitrators so chosen to decide such matters so submitted within thirty (30) days after their selection as aforesaid, or within such further time as shall be given to them in writing by the parties hereto.

In witness whereof, the parties hereto have hereunto caused their corporate names and seals to be set by their authorized officers.

THE LAKE STREET ELEVATED RAILROAD COMPANY,

(Signed) By D. H. LOUDERBACK, *Pres't.*

Attest:

(Signed) R. LAUGHLIN, *Secretary.*

NORTHWESTERN ELEVATED RAILROAD COMPANY,

(Signed) By E. W. SHERMAN, *Vice-Pres.*

Attest:

(Signed) HOWARD ABEL, *Secretary.*"

770 Q. Mr. Louderback, what was the life of the ordinance referred to in that contract?

A. Fifty years.

Q. It was under this contract of guaranty, was it not, Mr. Louderback, that the moneys which you say were advanced on account of the Northwestern Elevated Railroad Company for the payment of the interest on the debentures due in July, 1895, and January, 1896, was paid?

A. Yes.

Q. I want to show you another instrument, dated the 25th day of February, A. D. 1895, between A. A. Slaughter, John R. Walsh, and George H. Webster, all of Chicago, and ask you if that is the agreement that has been referred to as the first agreement for sealing the bonds referred to in this contract of guaranty to which I have just called your attention?

A. Yes.

Q. It is also the authority, is it not, under which the contract between the Lake Street Elevated Railroad Company and the Northern Trust Company, by which the Northern Trust Company holds these sealed bonds in trust, was executed.

Mr. KNIGHT: Objected to.

A. Yes.

Mr. KNIGHT: The document will show how they held them, and not his opinion.

The COURT: That doesn't affect the terms at all. It may stand.

Mr. HERRICK: I offer in evidence this document which has just been referred to.

771 This indenture, made this twenty-fifth day of February, A. D. 1895, between A. O. Slaughter, John R. Walsh and George H. Webster, all of Chicago, acting in this behalf not personally or individually but as a committee of the holders of the first-mortgage bonds of the Lake Street Elevated Railroad Company, first parties, the Northern Trust Company, of Chicago, Illinois, second party, and the Lake Street Elevated Railroad Company, third party, witnesses:

Whereas, said committee is about to recommend to the holders of said first-mortgage bonds of said The Lake Street Elevated Railroad Company that they sign for and enter into the arrangement for ultimate adjustment of their bonds, all as indicated and set forth in the proposed power of attorney to said committee, a copy of which is hereto attached for greater certainty and marked "A," and

Whereas, said railroad company desires that said adjustment be brought about and be put in operation as soon as reasonably practicable, and has requested the said committee and said The Northern Trust Company, the proposed trustee under said plan of adjustment, to proceed forthwith to bring about, so far as practicable, the said proposed adjustment, and

Whereas, one of the conditions of said plan is that said railroad company shall pay all charges and expenses necessary or proper in relation thereto, including all charges of trustee and attorneys, and

Whereas, said trust company has been applied to to accept and act as trustee under said plan of adjustment, and is willing
772 so to do provided that all its reasonable charges under and in relation to the trust and all of its attorneys' fees shall be paid either by said railroad company or the beneficiaries of the trust, and provided, further, that before entering upon said proposed trusteeship all the terms and provisions thereof shall be fixed and reduced to certainty by an instrument of trust signed by said railroad company and by said trust company, to be approved of by said bondholders' committee and to be in the form and terms satisfactory to the attorneys for said trust company.

1. Therefore, this writing witnesses: That the third party hereto has covenanted and agreed to and with the parties of the first and second part- hereto that it said railroad company will promptly do and cause to be done all things which on its part shall be necessary or proper to carry out and perform said proposed plan of adjustment, including the causing of said guaranty of said debentures to be made by said The Northwestern Elevated Railroad Company.

2. That the party of the third part hereto will promptly pay and discharge all the expenses and charges necessarily or properly incurred in originating said proposed plan of adjument and in carrying the same out, including all cost of advertisng and printing, and all attorneys' fees of said committee and of said trust company and all the reasonable charges and expenditures of the trust from this date up to the final closing of the proposed trust on its part.

773 3. It is further agreed between all the parties hereto that before said trust company shall enter upon said proposed trust, all the terms and conditions thereof in form to be satisfactory to said trust company and its attorneys, shall be declared and fixed in a written instrument which shall be signed by said railroad company and said trust company, and be approved of by said bondholders' committee.

In witness whereof, the party of the third part hereto has hereunto caused its corporate name and seal to be set by its authorized officers.

—— ——,
By —— ——.

—— ——.

774 STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County, May Term, A. D. 1896.

LAKE STREET ELEVATED RAILROAD COMPANY } In Chancery.
vs.
FARMERS' LOAN AND TRUST COMPANY ET AL. } Gen. No., 172,156.

Certificate of Evidence.

Vol. III.

(Pages 473 to 743, inc.)

Filed Jul- 16, 1896.

S. D. GRIFFIN, *Clerk.*

775 Q. Was there also, Mr. Louderback, another paper executed by the bondholders who deposited their bonds?

A. Yes; a paper in the nature of a power of attorney. It is a part of that document which you have in your hand.

Mr. HERRICK: I offer that power of attorney in evidence also.

(Said last-mentioned power of attorney was therefore read in evidence by counsel for defendant The Farmers' Loan and Trust Company and was as follows, to wit:)

776 "Whereas, the undersigned are the holders of the number of bonds below set opposite their respective names, issued by the Lake Street Elevated Railroad Company, a corporation under the laws of the State of Illinois, and dated the 7th day of April, 1893, and secured by a mortgage made by said railroad company April 7, 1893, and recorded May 6, 1893, in the recorder's office of Cook county, Illinois, in Book 4256 of Records, at page 230, and recorded in the office of the secretary of State of Illinois May 11, 1893, and there recorded in Book 12, at page 266, running to the American Trust and Savings Bank of Chicago, Illinois, and the Farmers' Loan and Trust Company of the State of New York.

And whereas, said railroad company was unable to pay the

interest due upon said bonds January 1st, 1895, and it is proposed that the holders of said bonds shall arrange to scale the same so as to make the bonded indebtedness of said company at such sum that said company will be able to pay or cause to be paid the interest upon the bonded indebtedness to be so reduced.

Now therefore, this instrument witnesseth:

That the undersigned, each for himself and not for the others, do hereby make, constitute, and appoint, and by these presents do make, constitute, and appoint John R. Walsh, George H. Webster, and A. O. Slaughter, of the city of Chicago, Illinois, the true and lawful attorneys of each of the parties hereto, for and in the name and place and stead of each of the parties hereto, to negotiate with the Lake Street Elevated Railroad Company for the purpose of arranging an adjustment of said bonded indebtedness.

777 First. Said attorneys are authorized to agree with said railroad company upon an arrangement whereby the bonds held by each of the parties hereto may ultimately be taken up on the basis of sixty per cent. (60%) of the par value of the face of said bonds in debentures, and fifteen per cent. (15%) of the par value of said bonds in unsecured income bonds.

Second. The Northern Trust Company, a corporation under the laws of the State of Illinois, is hereby made the trustee for the purpose of carrying out and effecting the adjustment of such bonded indebtedness and all bonds represented and signed for by the parties hereto shall be deposited with said trust company.

Third. In making such agreement concerning said bonds upon said basis, said attorneys are authorized to arrange for and on our behalf for fifteen per cent. (15%) in unsecured income bonds of said railroad company and sixty per cent. (60%) in debenture obligations of said railroad company, secured by the bonds deposited with said trust company hereunder, which said debentures so to be issued by said railroad company shall be issued upon the basis of sixty per cent. (60%) of the par value of the bonds deposited hereunder, and shall draw interest at five per cent. per annum from the first day of January, A. D. 1895, and payable semi-annually on the first days of January and July in each year, and with coupons thereto attached. The lien of said mortgage and the security thereunder for the bonds so deposited shall remain to the full amount of the face of the bonds and the interest thereon

778 until such time as said debentures may be paid or all surrendered to said trust company for cancellation.

The purpose and intent of this instrument being to permit said railroad company to issue as against the bonds so deposited a negotiable debenture which shall rest for security upon the bonds so deposited with all the rights which said bonds deposited have under said mortgage and also to the extent of fifteen per cent. (15%) to issue the unsecured income bonds above mentioned.

Fourth. Upon the issue of the debentures and income bonds as aforesaid, an agreement shall be made by said railroad company, which shall provide:

(a) That no additional bonds shall be issued under said mort-

gage of April 7, 1893, or certified by the trustees under said mortgage for the purposes of paying interest.

(*b.*) That no bonds shall be issued hereafter under said mortgage for construction purposes, except for the actual cost of such construction, and the par value of all bonds so hereafter issued shall only equal the cost of such construction. Before the issuing of any such bonds for construction said railroad company shall submit to said trustees under said mortgage, contracts, vouchers and statements under oath of the president of the railroad company, showing the actual cost, which said vouchers and statements shall be subject to the inspection and examination of any bondholder.

(*c.*) The principal and interest payable under said de-
779 bentures as aforesaid, shall be guaranteed in writing by the Northwestern Elevated Railroad Company, a corporation under the laws of the State of Illinois, by a guaranty in such form and upon such terms as may be agreed upon by said attorneys and said railroad company.

Fifth. In case this agreement is not signed by the holders of at least three million, eight hundred thousand dollars ($3,800,000) par of the bonds now issued under said mortgage on or before the 1st day of April, A. D. 1895, or in case at least three thousand eight hundred (3,800) bonds are not deposited hereunder, on or before the 1st day of April, 1895, then this instrument shall be and become inoperative and the respective bonds shall be returned to the respective depositors thereof.

Sixth. The parties signing this agreement shall not be liable hereunder to any person or persons or corporation whatsoever for or on account of any expense or other charge made or incurred in originating or in carrying out the provisions of this power, nor shall said John R. Walsh, George H. Webster and A. O. Slaughter, or any of them be liable for any cost or expense hereunder, or in any manner whatsoever, but said attorneys shall require said railroad company in order to make the adjustment as herein provided, to pay all expenses and charges necessary or proper in relation hereto, including all charges of the trustee and necessary attorney's fees.

Seventh. The form, terms and time of payment of said debentures
and income bonds to be such as said attorneys and said rail-
780 road company may be able to agree upon; time of payment not, however, to extend beyond the date of maturity of the mortgage bonds, and the income bonds to draw interest at five per cent. per annum from January 1st, 1895, payable only when earned out of net earnings of each current year beginning January 1st, 1895, over and above all expenses of the operation and maintenance of the lines, property and plants of the company, taxes, insurance and all other fixed charges, including interest on all the bonds from time to time outstanding, under said trust deed, and said interest not to be cumulative.

Eighth. If all of the bonds and interest coupons at this date issued under said mortgage by said railroad company are deposited with said Northern Trust Company for the purpose of issuing said debentures, then and not before said trust company may cancel and

deliver to said railroad company for destruction forty per cent. (40%) of the par value of said mortgage bonds, and the coupons therewith, and the remaining sixty per cent. (60%) shall in such case be held by said trust company as security for said debentures, and said trust company may thereupon deliver to said debenture-holders such number of said sixty per cent. (60%) of bonds as will equal the par value of such debentures surrendered and cancelled, upon the Northwestern Elevated Railroad Company guaranteeing the payment of principal and interest of said sixty per cent. (60%) of the bonds, interest to be adjusted as of the time of the exchange.

Ninth. The terms and conditions upon which said Northern Trust Company shall accept and execute the trusts in relation to said bonds and debentures shall be expressed in a written instrument
781 between said attorneys, said Lake Street Elevated Railroad Company and said Northern Trust Company.

Tenth. Any party holding any of said mortgage bonds may become a party hereto and have the benefit hereof at any time after said three thousand eight hundred (3,800) bonds have been signed for and deposited as aforesaid by signing this instrument and depositing his bonds as herein required. Provided said party shall so sign and deposit his bonds within thirty days after said thirty-eight hundred (3,800) bonds shall be signed and deposited as aforesaid.

Eleventh. The deposit of said mortgage bonds with said Northern Trust Company shall pass and transfer to it the full and complete title to the respective bonds in trust for the purposes hereby intended and in the said instrument of trust to be more fully expressed. Said trust company is to certify in form satisfactory to it the respective debentures which shall be issued in accordance with the intent hereof, as being the debentures entitled to share in the security afforded by said deposit of said bonds, and immediately upon the certification and issue of the respective debentures the legal holders of the debentures from time to time shall be and become entitled to their proportionate share of the security afforded by the whole deposit of bonds, and the original depositors of the respective bonds shall have no further interest in the bonds deposited save and except as they may be holders of debentures; that is to say, the security shall follow the ownership of the debentures and said income
782 bonds shall have no relation to or share in the security furnished by the mortgage bonds deposited.

Twelfth. In case of the death, absence, resignation or inability to act of either of said three attorneys, the remaining attorneys, or if they fail to appoint, said The Northern Trust Company may appoint a successor or successors to such attorney, and said attorneys shall have power to add two or more additional attorneys to act with them hereunder, and in case of such addition the majority shall govern and control. And the attorneys hereunder may, at their option, extend the time for bondholders to come in hereunder by written notice to said Northern Trust Company and such published notice as the attorneys may deem necessary.

Thirteenth. The said John R. Walsh, George H. Webster and

A. O. Slaughter may do whatever else they may deem necessary or advisable in order to carry out the purpose, spirit and intent of this agreement, and if necessary in order to carry out the purpose hereof, may proceed under the powers in said mortgage contained and use the bonds deposited to foreclose said mortgage, or take such steps or other means that may be necessary in order to secure the intent and purpose hereof, and for such purpose may bring suit or suits as the holders of said bonds, and compromise, settle or adjust the same after such suits have been begun as they shall deem advisable or necessary in order to carry into effect the intent hereof, hereby giving and granting unto said John R. Walsh, George H. Webster and A. O. Slaughter as full power and authority to do and perform all and every act and thing whatsoever requisite
783 and necessary to be done in and about the premises, as fully to all intents and purposes as each or all of the parties might or could do if personally present at the doing thereof, hereby ratifying and confirming all that our said attorneys shall lawfully do or cause to be done by virtue hereof.

Principal and interest of debentures and income bonds to be payable in gold coin of the United States of the present standard of weight and fineness.

City of Chicago, February 21st, A. D. 1895.

Names.	P. O. address.	Number of bonds."

784 Q. That power was signed by the different bondholders depositing their bonds, was it?

A. Yes, sir.

Q. I call your attention to an agreement dated June 3, 1895, between the Lake Street Elevated Railroad Company and the Northwestern Elevated Railroad Company relating to the crossing of the respective roads, and ask if that is the original document executed by those parties.

A. Yes, sir.

Mr. HERRICK: I offer that instrument in evidence also.

(Said last-mentioned instrument was thereupon read in evidence by counsel for said defendant, The Farmers' Loan & Trust Company, and was as follows, to wit:)

785 "This agreement, made this third day of June, A. D. 1895, by and between the Northwestern Elevated Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Illinois, party of the first part, hereinafter called the 'Northwestern Company,' and the Lake Street Elevated Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Illinois, party of the second part, hereinafter called the 'Lake Street Company,' witnesseth:

Whereas, the city council of the city of Chicago did on the 8th day of January, 1894 pass a certain ordinance authorizing the Northwestern Company to construct, maintain and operate an elevated railroad and branches, as in said ordinance more particularly de-

scribed, and which said ordinance was duly accepted by said Northwestern Company, and a bond filed as therein prescribed, and is made a part hereof, and the same is now in full force and effect; and,

Whereas, under said ordinance it was provided in section 9 thereof, as follows:

'The permission and authority hereby granted are upon the further express condition that nothing herein contained shall be construed to prevent the city council from granting to any other railroad company the right to cross the line hereby authorized, at an elevation above the tracks of this company so great that the clear head-room between the lower chord of the girders of such elevated structure so crossing, and the surface of the rails of the structure of this company shall be at least sixteen (16) feet.'

And whereas, said Northwestern Company under said ordinance and its charter did, prior to October 1st, 1894, locate its line
786 of elevated railroad under said ordinance and its charter, across said Lake street, running north and south between La Salle street on the east and Fifth avenue on the west; and,

Whereas, the city council of the city of Chicago did by a certain ordinance, passed October 1st, 1894, authorize the said Lake Street Company to extend its line of elevated railroad from Market and Lake streets eastwardly upon Lake street to the east line of Wabash avenue, which said ordinance the said Lake Street Company duly accepted and filed the bond, as therein required, and the same is now in full force and effect, and is made a part hereof; and,

Whereas, in said ordinance relating to the Northwestern Company, it was provided that no part of the girders of the superstructure should be less than fourteen (14) feet above the established grades of streets and alleys; and,

Whereas, a like provision was also contained in said ordinance relating to the said Lake Street Company's right to build along and upon Lake street as aforesaid; and,

Whereas, said Lake Street Company cannot, under said ordinance, build its line of elevated railroad along and upon Lake street as aforesaid, continuing its present grade from Market and Lake streets without crossing the right of way of said Northwestern Company as aforesaid, except at the height of sixteen (16) feet over the same, as provided in section 9 of said ordinance, relating to the Northwestern Company; and,

Whereas, it is deemed for the best interests of both of said corporations that some amicable arrangement or adjustment should be made with reference to the crossing of said two railroads
787 between La Salle street and Fifth avenue.

Now therefore, it is agreed by and between the parties hereto, as follows, viz:

First. That said Northwestern Company does hereby agree to permit and allow said Lake Street Company to cross the right of way, structure and tracks of said Northwestern Company between La Salle street and Fifth avenue in the South division of the city of Chicago, at grade.

Second. In consideration of the grant as aforesaid by the Northwestern Company to the Lake Street Company the Lake Street Company does hereby agree upon its part to permit and allow and does hereby permit and allow the said Northwestern Company to cross the right of way structure and tracks of the Lake Street Company at any point over its line of road upon Lake street between Market street and Wabash avenue, at grade.

Third. The Lake Street Company shall bear and pay all expense of the said grade crossing over the Northwestern Company's road between La Salle street and Fifth avenue, as specified in the first clause hereof.

The Northwestern Company shall bear all expense of the grade crossing as granted in the second clause above.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective officers, attested by their respective secretaries and caused their respective corporate seals to be attached the day and year first above written.

NORTHWESTERN ELEVATED RAILROAD CO.,

(Signed) By D. H. LOUDERBACK, *President.*

Attest:

(Signed) HOWARD ABEL, *Secretary.*

THE LAKE STREET ELEVATED RAILROAD CO.,

(Signed) By A. S. LITTLEFIELD, *Vice-President.*

Attest:

(Signed) R. LAUGHLIN, *Secretary.*"

788 Q. I have called your attention, Mr. Louderback, to an agreement dated the 28th day of December, 1894, between the Lake Street Elevated Railroad Company and the Union Elevated Railroad Company. Is this that agreement?

A. That is the original document.

Q. What does it relate to?

A. It relates to the user by the Union Elevated, as licensees of the East Lake Street extension, to Wabash avenue.

Q. And it defines the terms upon which that user is granted?

A. Yes, sir.

Mr. HERRICK: I offer that document in evidence.

(The document last referred to by counsel was thereupon read in evidence by counsel for said defendant, The Farmers' Loan & Trust Company, and is in the words and figures as follows, to wit:)

789 "Articles of agreement, made this twenty-eight- day of December, in the year 1894, by and between the Lake Street Elevated Railroad Company, a corporation organized under and by authority of the laws of the State of Illinois, of the one part, hereinafter called the Lake Street railroad, and the Union Elevated Railroad Company, a corporation organized — and by authority of the laws of the State of Illinois, of the second part, hereinafter called the Union railroad.

Whereas, said Lake Street railroad is authorized by its charter and by an ordinance duly passed by the city council of the city of Chicago, on the first day of October, A. D. 1894, to construct, maintain and operate for the period of fifty years 'an elevated railroad with two (2) tracks, and such curves, side tracks, switches, sidings, turnouts, connections, supports, columns, girders, telegraph, telephone, signal and other devices as the said company may in like manner deem necessary for operating its road along and upon the following route in the city of Chicago, to wit: A line of road connecting at the east line of Market street, extended north with the line of road now constructed and operated by said company on Lake street, thence extending east upon Lake street to the east line of Wabash avenue;' and

Whereas, said Union railroad is authorized by its charter to construct an elevated railway in the city of Chicago, 'commencing at a point between the Chicago river and the south line of
790 Washington street, between the South branch of the Chicago river and Lake Michigan, and thence running easterly to a point between the west line of State street and Lake Michigan, and thence running southerly to a point between the south line of Twelfth street and the north line of Van Buren street, and thence running westerly to a point between the South branch of the Chicago river and the east line of Clark street, and thence running northerly to a point between the south line of Washington street and the Chicago river, and thence running easterly to the place of beginning; with all the necessary branches, switches, curves, spurs, side tracks, sidings, turnouts, connections and turn-tables along the line of the proposed railway;' and

Whereas, it is deemed for the best interests of the public that the said proposed elevated railroad loop authorized to be constructed by said Union railroad shall be used in common by all elevated railroads already constructed or in process of construction in said city; which said agreement it is believed will greatly facilitate the movement of trains and materially lessen the risk of blockades, better accommodate the public and best subserve the interests of the several corporations concerned; and

Whereas, the said Lake Street railroad is without the necessary means to complete the construction of its said line of railway
791 in Lake street between Market street and the east line of Wabash avenue as authorized by said ordinance of October 1st, A. D. 1894, and is unable to make the payments or perform its agreement stipulated to be paid and performed in and by a certain

agreement in writing of date October 15, 1894, made by said Lake Street railroad with the Phœnix Bridge Company, for the construction of said railroads in Lake street, between Market street and the east line of Wabash avenue; and,

Whereas, said Lake Street railroad has been in negotiation with said Union railroad, with the view of coming to some understanding that should be mutually satisfactory, upon which, the said Union railroad would agree—among other things hereinafter specifically set forth—to advance and make the payments stipulated to be paid by said Lake Street railroad in its said agreement with the said, The Phœnix Bridge Company, whereby the construction of said railroad line in Lake street might be fully completed and put in operation; and to that end, the parties hereto have agreed upon the terms and conditions hereinafter set forth.

Now, this agreement witnesseth:

First. That the parties hereto, in consideration of mutual promises, and the sum of one dollar by each to the other respectively paid, do hereby promise and agree to and with each other as
792 follows—each binding itself, its successors and assigns, as well as to the original parties, and that performance shall be permitted by successors and assigns, as well as by the original parties.

Second. Said Lake Street railroad hereby agrees to and with said Union railroad that so soon as the construction of that portion of the elevated railroad of said Lake Street railroad, in Lake street, between Market street and the east line of Wabash avenue, as authorized by said ordinance of the city of Chicago, passed October 1st, A. D. 1894, shall have been fully completed, said Union railroad shall have permission and authority, and permission and authority are hereby granted to it, to pass over and along, with its motors, cars and trains, the whole, or any part of the right of way, and tracks of said Lake Street railroad in said Lake street, and so to use, in common with said Lake Street railroad, the whole, or any part of the right of way and tracks on said line or railroad to be completed in said Lake street; the same to be used only in connection with the proposed elevated railroad loop to be constructed by said Union railroad, with the right to connect the tracks of said proposed elevated loop with the tracks of said Lake Street railroad to be constructed and laid in Lake street, so that the line of railway to be completed in Lake street, or any part thereof, may be used by said Union railroad, in common with said Lake Street rail-
793 road for the operation of said Union railroad's motors, cars and trains in connection with the contemplated loop to be built by said Union railroad, as authorized in its articles of incorporation.

Third. Should said Union railroad enter into any agreement with the Northwestern Elevated Railroad Company, the Metropolitan West Side Elevated Railroad Company and the Chicago & South Side Rapid Transit Railroad Company, hereinafter known and called 'other elevated railroads,' to operate their cars in, along and upon the said proposed elevated railroad loop to be constructed by

said Union railroad, said Union railroad is hereby authorized and empowered to incorporate into every such agreement, and therein to give and grant permission and authority to such other elevated railroads the right and privilege of using in common with the parties hereto, in the same manner, and to the same extent as such privilege or use is herein given and granted to said Union railroad, the tracks to be constructed in said Lake street, if the same shall be used in connection with the operation of said proposed loop line; and such permission and authority are hereby granted unto each and every such other elevated railroads to use, in common with the parties hereto, the right of way and tracks of said Lake Street railroad, on said line of railroad to be completed in Lake street, in the same manner, and to the same extent as such privilege or use
794 is herein and hereby granted and given to said Union railroad; provided, however, that such other elevated railroads shall enter into a contract with said Union railroad, to operate their cars upon and along the proposed elevated loop to be constructed by said Union railroad.

Fourth. Said Lake Street railroad further agrees, that the license and permission hereby granted for the use of its right of way and tracks on its said line of railway to be constructed in said Lake street, for the operation thereon of the motors, cars and trains of said Union railroad; and also for the motors, cars and trains of such other elevated railroads as herein defined, shall extend to the whole, or any part of said line of railway, as shall be selected and designated, at the option of said Union railroad. That is, when said Union railroad shall lay out and construct its proposed elevated railway loop, and shall connect the tracks of such loop line with the tracks of said line of railway to be constructed in said Lake street as hereby authorized; this agreement for the user herein permitted and granted, shall extend to, and apply only to the whole or that part of said line of railway so selected by said Union railroad, and forming a part and portion of said proposed loop line, and connected with said proposed elevated loop line of railway.

Fifth. Said Lake Street railroad further agrees, that after
795 its line of railway in Lake street, between Market street and the east line of Wabash avenue, shall have been fully completed, in compliance with the ordinance of October 1st, 1894, and as required in and by its said agreement with the said, The Phœnix Bridge Company, said Lake Street railroad shall keep and maintain the said railway line in said Lake street in as good repair, efficiency and condition as when completed, and at its own cost and expense; and shall also, at its own cost and expense, bear, pay and discharge all taxes and assessments which may be assessed against said Lake Street railroad, upon said railway line to be constructed in said Lake street, and also all license fees and insurance appertaining thereto.

Sixth. Said Lake Street railroad further agrees that the traction of its cars on said line of railway to be constructed in said Lake street and all work incidental thereto, shall be done at all times by the Lake Street railroad in such manner as not to unnecessarily interfere with or obstruct the said Union railroad or other elevated

railroads—with which said Union railroad shall have contracted as herein provided for—in the use of, in common, of the tracks of said Lake Street railroad, as hereby licensed and permitted to be used, for the operation of their respective motors, cars and trains.

Seventh. Said Lake Street railroad further agrees to per-
796 form and carry out such obligations as to the construction of its tracks in said Lake street, as have been assumed by it under each and every ordinance heretofore granted to it by the city of Chicago, to the end, that each and every such ordinance shall be complied with by said Lake Street railroad. It shall and will during the term of this agreement maintain its corporate existence and organization; it shall and will put in force and exercise each and every corporate power and do each and every corporate act it might now or may at any time hereafter lawfully put in force or exercise to enable the said Union railroad and such other elevated railroads with whom it may contract as herein provided, to enjoy and exercise the permission, authority and privileges hereby licensed and permitted.

Eight-. Said Lake Street railroad further agrees, that in the event said Union railroad should fail to obtain the necessary frontages for its proposed elevated railway loop line along the route designated in its articles of incorporation, or said Union railroad should fail to obtain an ordinance from the city of Chicago authorizing it to construct, maintain and operate an elevated railway line in and along the route designated in its articles of incorporation, and said Union railroad shall have before then paid to the said, The Phœnix Bridge Company, any moneys, as hereinafter promised and agreed to be paid by said Union railroad, in and by the
797 twelfth clause of this agreement, then and in the event of any such failure as aforesaid, either to obtain said necessary frontages, or to obtain said ordinance, said Lake Street railroad hereby agrees and promises to pay and refund to said Union railroad, all of the moneys which shall have been so advanced and paid by the said Union railroad to the said The Phœnix Bridge Company, and which said moneys shall be paid and refunded to said Union railroad by the said Lake Street railroad, with interest thereon at the rate of six per centum per annum, from the time of each such payment, within sixty days after written notice shall have been served upon the president of said Lake Street railroad, that said Union railroad has failed either to obtain said frontages, or to secure said ordinance as aforesaid. And in event of failure, either to obtain said necessary frontages or said ordinance for the construction of its said railway line, said Union railroad shall be released from the further performance of each and every and all of its agreements and stipulations herein contained.

Ninth. Said Union railroad, in consideration of the permission, authority and privileges hereby granted to it, promises and agrees to and with said Lake Street railroad, that said Union railroad will, without delay, take the necessary steps to obtain the frontage required by law, in, along and upon the route authorized in its
798 articles of incorporation; and shall and will within ninety (90) days after the date hereof, lay out and specially designate

its route, and exercise the option herein given to it, to select either the whole or such part of the line of railway to be constructed in Lake street, as said Union railroad shall see fit, and with which it proposes and intends to connect its said propose- elevated railway loop lines; and, also, as soon as the necessary frontages along said route shall have been obtained, said Union railroad shall and will prepare, and present to the mayor and city council of the city of Chicago, an ordinance authorizing and permitting said Union railroad to construct, maintain and operate said elevated railway line as authorized in its articles of incorporation.

Tenth. Said Union railroad further agrees, that it shall and will, as soon as an ordinance shall be granted to, and accepted by said Union railroad, authorizing the said construction of said proposed elevated railway loop line, immediately begin the construction o said railway, and shall and will faithfully prosecute the said work to a final completion, without any unnecessary delay on the part of said Union railroad.

Eleventh. Said Union railroad further promises and agrees to reimburse and pay to the said Lake Street railroad such
799 sum or sums of money as have been expended by said Lake Street railroad in securing frontages for its said line of railway in said Lake street; and also, such further sum or sums of money as have been expended by said Lake Street railroad for rights of way in said Lake street, or for other privileges, matters or things properly and justly chargeable to that part of its right of way in said Lake street; and also, the further sum of fifty-five thousand dollars ($55,000), expended by said Lake Street railroad in putting in the structural foundations for said Lake Street railroad line, under its said agreement with the said The Phœnix Bridge Company, and to pay the said several sums of money, after the same shall have been ascertained and verified by the certificate of the president of said Lake Street railroad, and after an ordinance shall have been granted to, and accepted by said Union railroad, authorizing the construction of said proposed elevated railway loop line, and which said several sums of money shall be paid as follows:

The sum or sums of money expended for frontages within 60 days after said ordinance shall be granted to, and accepted by, said Union railroad; the sum or sums of money expended for rights of way, or other privileges, matters or things properly and justly chargeable to its right of way in said Lake street, within 60
800 days after said ordinance shall be granted to, and accepted by, said Union railroad; and the sum of fifty-five thousand ($55,000) dollars within 30 days after said ordinance shall be granted to, and accepted by, said Union Railroad Company.

Twelfth. Said Union railroad further promises and agrees, in order that the construction of said railway line in said Lake street, as contracted to be built by said agreement between said Lake Street railroad and the said, The Phœnix Bridge Company, shall proceed to completion, without interruption or delay, to pay to the said, The Phœnix Bridge Company, all moneys which shall hereafter become due and payable under said agreement, and at the several times,

and in the manner stipulated and agreed to be paid in and by the said agreement, and to do and perform, so far as it may lawfully do and perform, each and every thing required to be done and performed by said Lake Street railroad, under and in pursuance of the said agreement between the Lake Street railroad and the said, The Phœnix Bridge Company, and which said agreement, together with the plans and specifications mentioned in said agreement, are hereby made a part of this agreement, a copy of which *are* hereby annexed and marked "Exhibit A."

801 Thirteenth. The duration of this agreement shall be fifty years or so much of that period as the parties hereto now have, or shall hereafter acquire the right and power to so contract, without any right in either party to revoke the same without the written consent of the other, except as hereinafter stipulated, may be done by said Union railroad, and each of the parties hereto agrees to do nothing prejudicial to, or which may interfere with the execution thereof.

Fourteenth. It is mutually agreed between the parties hereto, that if said Union railroad shall at any time hereafter, enter into an agreement in writing with said other elevated railroads to operate their motors, cars and trains along and upon the said proposed elevated railroad loop to be constructed by said Union railroad, said Union railroad shall immediately give notice in writing of the fact to said Lake Street railroad, and said Lake Street railroad shall within ten days after receiving such notice, make and enter into a like agreement in writing with said Union railroad for the right and privilege to use—in common with the others, for the operation of its motors, cars and trains—the right of way and tracks of said Union railroad upon and along said proposed elevated railroad loop, provided, however, and it is hereby expressly agreed, that no consideration or compensation whatsoever shall be paid by,

802 or charged to said Lake Street railroad for the use of, or right to use any part of the railroad belonging to said Lake Street railroad in said Lake street; but otherwise, said agreement shall be made upon the same terms and conditions in every respect, as shall be stipulated and agreed to between such other elevated railroads and said Union railroad.

Fifteenth. It is mutually understood and agreed and intended by the parties hereto, that the permission and authority to use the said tracks of the said Lake Street railroad in the manner and for the purposes in this agreement expressed shall not pass any interest, nor alter or transfer property, in anything belonging to said Lake Street railroad; that the permission and authority and privileges hereby granted by said Lake Street railroad to said Union railroad and other elevated railroads, shall be held and considered, as a mere permission or license, to use the tracks of said Lake Street railroad, in the manner aforesaid, and for the purpose aforesaid, without said Union railroad, or other elevated railroads acquiring or possessing any estate therein.

In witness whereof, each of the parties hereto has caused its corporate seal to be hereto affixed, and the same to be attested by the

signatures of their respective presidents and secretaries, as of the day and year first above written.

LAKE STREET ELEVATED RAILROAD COMPANY,
By D. H. LOUDERBACK, *President.*

[SEAL.]
Attest: W. L. GAREY, *Secretary.*

UNION ELEVATED RAILROAD COMPANY,
By LE GRAND W. PERCE, *President.*

Attest:
[SEAL.] EDWARD KOCH, *Secretary.*"

803 Q. I have an agreement here dated the 19th day of December, 1894, between the Union Elevated Railroad Company, the Lake street Elevated Railroad Company, the Northwestern Elevated Railroad Company, the Metropolitan Elevated Railroad Company, and the Chicago & South Side Rapid Transit Railroad Company, and I will ask you if that is the original document.

A. That is the original document.

Q. To what does it relate?

A. It relates to the use of the Lake Street extension referred to in a previous document, as well as the other three sides of the loop when they shall have been secured.

Q. This is in the nature of a grant by the Union Elevated Railroad Company to those companies?

A. Yes, sir.

Mr. HERRICK: I offer this document in evidence.

(Document last referred to by counsel was thereupon read in evidence by counsel for said defendant, The Farmers' Loan & Trust Company, and is in the words and figures as follows, to wit:)

804 "This agreement, made and entered into this 19th day of December, A. D. 1894, by and between the Union Elevated Railroad Company (hereinafter designated as the lessor), party of the first part, and the Lake Street Elevated Railroad Company, the Northwestern Elevated Railroad Company, the Metropolitan West Side Elevated Railroad Company, and the Chicago and South Side Rapid Transit Railroad Company (hereinafter designated as the lessees), parties of the second part.

Whereas, the lessees, or some of them, have heretofore taken steps to procure, in their respective individual interests, the construction of a section or sections of elevated railroad in the city of Chicago, whereby the termini of the railroads of said lessees might be connected, and whereby the several lessees might be enabled to reach with their respective railroads that part of the city of Chicago included within the 'loop line' hereinafter provided for and described, and

Whereas, the party of the first part has offered to build or acquire an elevated railroad for the common use of said lessees, as hereinafter provided, and it is deemed for the interest of all the parties hereto that such railroad should be constructed and acquired by one company and should be leased by it to the lessees, as hereinafter provided, in lieu of having the same, or various parts thereof, constructed by the several lessees, and

805 Whereas, in view of said offer the said lessees have determined to abandon their separate efforts and plans for the construction of said 'loop line' and to avail themselves of said offer, provided that the same shall be fully carried out and performed by the lessor, in accordance with the provisions of this agreement.

Now, therefore, this agreement witnesseth:

That the said parties in consideration of the sum of one dollar by each to the other paid, the receipt whereof by each party is hereby acknowledged, do hereby mutually agree to and with each other as follows, to wit:

First. The lessor, as soon as the necessary consents of the property-owners can, by the exercise of due diligence be procured, shall apply to the city council of the city of Chicago for an ordinance granting to it the power and authority to construct, maintain and operate and to lease to other elevated railroad companies, for operation for a period of fifty (50) years, a double-track elevated railroad along and upon the following route, to wit: Commencing on Lake street at Franklin street; thence south on said Franklin street to Van Buren street; thence east on said Van Buren street to Wabash avenue; thence north on said Wabash avenue to said Lake street; thence west on said Lake street to the point or place of beginning; or, in lieu thereof, along or upon such route or streets as the

806 said lessor may select, provided that the said railroad shall constitute a complete loop or circuit connecting with the several railroads of the lessees, and provided further that said railroad shall lie wholly within the following boundary lines, viz: Commencing at the northwest corner of Franklin and Lake streets; thence south along the west line of Franklin street to the south line of Van Buren street; thence east along the south line of Van Buren street to the west line of Clark street; thence south along the west line of Clark street to the south line of Harrison street; thence east along the south line of Harrison street to the east line of Wabash avenue; thence north along the east line of Wabash avenue to the north line of Lake street, and thence west along the north line of Lake street to the point or place of beginning, with the necessary connections between the said railroad and the main lines of the railroads of the respective lessees.

Subject, however, to such changes or modifications as the parties hereto may hereafter mutually agree upon.

If within one year after the date hereof, an ordinance of the character above described (or an ordinance authorizing the construction of the east, south and west sides of said 'loop line' in case the

railroad on Lake street is substituted as hereinafter provided)
807 has not been obtained and accepted by the said lessor, then the said lessor or any one or more of the said lessees may, at its or their option, terminate this agreement on its or their part or parts.

Second. As soon as said ordinance is accepted by said lessor, it shall forthwith commence to construct the elevated railroad and connections thereof thereby authorized, and with the necessary and proper stations, not less than ten in number, all of which is hereinafter called the 'loop line' and such contract and feed rails as shall be necessary for the use upon said 'loop line' of the electric motors provided to be used upon the railroads of any or all of the lessees. Said 'loop line' with its stations and appliances shall be equal in character, quality and strength to the railroad of any lessee company.

After the commencement of said construction, the lessor shall diligently prosecute the same, and shall have the same completed and ready for operation as soon as practicable.

Third. It is understood and agreed that the said lessor, at its election, instead and in substitution of procuring an ordinance authorizing the construction of the northern side of said 'loop line,' and constructing the same according to the provisions of said ordinance, may procure from the said Lake Street Elevated Railroad Company all its rights in and to that portion of its railroad
808 hereinafter described, including the right to construct or complete the construction thereof, so that said lessor may lawfully include in the leases hereinafter provided for, the same right of use by the lessees in and to said portion of said Lake Street railroad as a part of said 'loop line' as is provided to be given in respect to the east, south and west portions of said 'loop line' which is to be constructed under the ordinance aforesaid; said portion of said railroad of said Lake Street Elevated Railroad Company is described as follows: The double-track elevated railroad of said Lake Street Elevated Railroad Company to be constructed on and along Lake street from the point of commencement of the west side of said 'loop line' to the point of termination of the east side of said 'loop line' as hereinabove described, and the elevated railroad of said lessor (which by this agreement is made the subject of lease and demise) shall in the event of such substitution be considered to be the 'loop line' of circuit formed by the railroad to be authorized by the ordinance aforesaid upon the east, south and west, and that part above described of the elevated railroad of said Lake Street Elevated Railroad Company, upon the north.

In the event of such substitution, if said double-track elevated railroad on that portion of said Lake street above described, has not been fully completed, the said lessor shall with all diligence fully complete the same, and equip it as herein provided for, the
809 remaining portion of said 'loop line.'

It is further agreed and understood that if the said lessor shall be unable to procure from the said Lake Street Elevated Railroad Company, all its rights in and to said railroad on Lake street, it

shall at least procure the right to complete said railroad and operate the same, and to grant to the said lessees the exclusive right of user thereof under the leases hereinafter mentioned.

Fourth. Each lessee shall pay to the lessor the entire cost of obtaining the consents of property-owners which may be necessary to be obtained for the construction of the connection between the main line of the railroad of said lessees and the said 'loop line' of said lessor, and also the cost of the construction of said connection.

Fifth. It is further agreed that upon the completion of the said 'loop line' or before that time, if all parties in interest shall so desire, a lease shall be made by the lessor to each of said lessees, granting to the lessees the exclusive joint, common, equal use of said 'loop line' for the running by each of continuous trains over the same and over their several railroads, and the like use of the stations upon said 'loop line' for passengers and the sale of tickets, with the privilege of renewal or renewals for so long a period as by any ordinance or other sufficient authority the lessor shall
810 be at any time authorized to maintain and operate said 'loop line,' and upon such terms as may be agreed upon between the lessor and lessees. It being expressly understood and agreed that no trains or cars shall be run upon said 'loop line' or any part thereof, except those of the lessees, and that while the use of said 'loop line' by all of the lessees shall be equal in character, the number of trains run by each shall be in proportion to the rental paid by each.

Sixth. It is further agreed that the terms and conditions of the leases to each of said lessees shall be identical, and that the said leases shall provide that the amount of rental to be paid by each of said lessees, shall bear that proportion to the whole amount of rental to be paid by all of said lessees, that the number of passengers carried by such lessee bears to the whole number of passengers carried by all of said lessees; it being understood that the amount of proportionate rental to be paid by each of the lessees shall, when added to the proportionate rental to be paid by each of the other lessees, equal at least the amount of interest charges, taxes and expenses of operation and maintenance paid by the lessor company, it being especially agreed that the lease to be made as herein provided shall pertain only to the right and privileges of the several lessees to the exclusive operation of the said 'loop line' by the trains of the respective lessee companies, and the necessary
811 use of stations for passengers and the sale and collection of tickets. And it is further understood and agreed that said leases shall provide that no lessee shall be in anywise liable for the act or default or any undertaking of any other lessee.

Seventh. It is further agreed that if said leases shall not have been executed and delivered to the lessees within six months after the date of this agreement, any lessee may at its option and upon written notice to the other parties of this agreement, withdraw from this agreement and terminate the same and thereupon shall be discharged from all liability, claims, demands, or obligations here-

under, anything to the contrary thereof hereinbefore contained notwithstanding.

In witness whereof the parties hereto have caused these presents to be signed by their respective presidents, and their respective corporate seals to be hereto affixed the day and year first above written.

UNION ELEVATED RAILROAD COMPANY,
By LE GRAND W. PERCE, *President.*
[SEAL.]
Attest: EDWARD KOCH, *Secretary.*

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By D. H. LOUDERBACK, *President.*
Attest:
[SEAL.] W. L. GAREY, *Secretary.*

NORTHWESTERN ELEVATED RAILROAD COMPANY,
By D. H. LOUDERBACK, *President.*
Attest:
[SEAL.] HOWARD ABEL, *Secretary.*

THE METROPOLITAN WEST SIDE ELEVATED RAILROAD COMPANY,
By R. E. JENKINS, *President.*
Attest:
[SEAL.] GEORGE HIGGINSON, JR., *Secretary.*

THE CHICAGO & SOUTH SIDE RAPID TRANSIT RAILROAD COMPANY,
By MARCELLUS HOPKINS, *President.*
Attest:
[SEAL.] JOHN H. GLADE, *Secretary.*"

812 Mr. HERRICK: I now call your attention to an agreement dated the 21st day of January, 1896, between the Union Elevated Railroad Company and the Northwestern Elevated Railroad Company, and I ask you if that is an original document.

A. Yes, sir.

Q. What does that agreement relate to?

A. The Northwestern represented that link of what is known as the Union loop between the East Lake Street extension——

Q. In the nature of a grant in the right of use?

A. Yes.

Mr. HERRICK: I offer that document in evidence.

(The document last referred to by counsel was thereupon read in evidence by counsel for said defendant, The Farmers' Loan & Trust Company, and is in the words and figures as follows, to wit:)

813 "Memorandum of agreement made and entered into this 21st day of January, A. D. 1896, by and between the Union Elevated Railroad Company (hereinafter designated as 'lessor')

party of the first part, and the Northwestern Elevated Railroad Company (hereinafter designated as 'lessee'), party of the second part, witnesseth:

That whereas, the said lessor, the first party, did on the 19th day of December, A. D. 1894, enter into two agreements with the Lake Street Elevated Railroad Company, the Northwestern Elevated Railroad Company, the Metropolitan West Side Elevated Railroad Company and the Chicago & South Side Rapid Transit Railroad Company, and did also, on the 13th day of May, A. D. 1895, enter into a supplemental agreement with the Northwestern Elevated Railroad Company and the Metropolitan West Side Elevated Railroad Company, subject to the right of the Lake Street Elevated Railroad Company and the Chicago & South Side Rapid Transit Railroad Company to become parties to the said supplemental agreement at any time that either or both of them should see fit so to do; the object and purpose of all the aforesaid agreements being to connect the termini of the said several railroads and to induce the said lessor to construct and maintain an elevated railroad loop line for such purpose, and for the joint and common use of all the said elevated railroad companies aforesaid, upon the terms and conditions mentioned and set forth in the said several agreements; and,

Whereas, the said lessor has acquired the rights and privileges in Lake street as required to be obtained in and by the aforesaid agreements and the elevated railroad structure in said Lake street being the north side of said loop line, has been fully completed and is now in operation; and,

814 Whereas, the said lessor has acquired from the city council the right to construct and maintain an elevated railroad structure in Fifth avenue, in the said city of Chicago, and also, the right to construct and maintain an elevated railroad structure in Wabash avenue, in said city, the said elevated railroad structure in said Fifth avenue when completed to constitute the west side of said loop line, and the said elevated structure in Wabash avenue, when completed, to constitute the east side of said loop line; and,

Whereas, by the agreement of May 13th, A. D. 1895, it is contemplated that as soon as the elevated structure shall be ready for use in either said Fifth avenue, or in said Lake street, or in said Wabash avenue, that the aforesaid elevated railroad companies, or either or any of them shall have the right to connect with and use each such side as soon as completed; and,

Whereas, work has been begun in both said Fifth avenue and said Wabash avenue for the construction of an elevated railroad as required in and by the aforesaid agreements, and the work thereon is progressing rapidly towards completion, and it is deemed advisable by the parties hereto to enter into the contract of lease, stipulated to be made in and by the said agreements of December 19th, A. D. 1894;

Now, therefore, in pursuance of the aforesaid agreement and in consideration of one dollar by each to the other paid, the receipt whereof is hereby acknowledged it is agreed between the said parties as follows:

First. The lessor in consideration of the rental hereinafter reserved and of the stipulations, agreements and covenants hereinafter contained and on the part of the said lessee its
815 successors and assigns to be observed and performed, the said lessor hereby grants unto the said lessee, its successors and assigns the right to operate its trains and cars upon, along and over the elevated railroad structure now in Lake street and forming the north side of the loop line stipulated to be constructed in and by the aforesaid agreements, and also, the right to operate its trains and cars upon, along and over the elevated railroad structures now in course of construction in Fifth avenue and in Wabash avenue, and forming the west and east sides respectively of the said loop line as soon as the same shall be completed, and also the right to operate its trains and cars upon, along and over the elevated railroad structure to be located and built, and which when constructed shall form the south side of the said loop line and also the right to use all stations upon said loop line for passengers and for the sale of tickets and for every other purpose necessary in order to operate the trains and cars of said lessee upon, along and over the said loop line with the right to connect and use each such side as soon as completed; provided, however, that the rights and privileges above granted to the said lessee its successors and assigns shall be exercised jointly and in common with the Lake Street Elevated Railroad Company, the Metropolitan West Side Elevated Railroad Company and the Chicago & South Side Rapid Transit Railroad Company as stipulated and agreed to be done in and by the aforesaid agreements.

Second. The said lessor hereby agrees that no trains or cars except those the property of and belonging to said lessee and the other several elevated railroad companies hereinabove mentioned shall be run or operated upon the said loop line.

Third. The said lessor further agrees to pay all costs for
816 maintenance and repair of the structure and the tracks of the said loop line, and also, all cost of maintenance, repair and operation of the several stations, switches, signals and signal towers of the said loop line; provided however, that the said lessor shall be reimbursed for all such costs so defrayed by it in the manner and as hereinafter stipulated and agreed upon.

Fourth. The said lessee hereby for itself, its successors and assigns covenants with the said lessor, its successors and assigns, that the said lessee its successors and assigns shall and will during the term of this lease pay to the said lessor, its successors and assigns as rent for the rights and privileges above granted such proportion of the whole cost defrayed by the said lessor for maintenance, repair and operation of the said loop line, as set forth in the above paragraph three, as the whole number of passengers carried by the said lessee bears to the whole number of passengers carried by all the elevated companies using and operating the said loop line or any part thereof, that is the proportion of such cost to be paid by the said lessee shall, when added to the proportions of such cost to be paid by the other companies be equal to the total cost defrayed by the

said lessor for the purposes above mentioned; and also, and in addition to the above proportionate share of said cost the said lessee agrees to pay the sum of one-half a cent for each paying passenger carried by the said lessee upon its railroad; provided, however, that the minimum rent to be paid by the said lessee in each and every year during the term of this lease shall not be less than its proportionate share to be determined as aforesaid of the actual cost of the maintenance, and operation of the said loop line as required in paragraph three above, to be defrayed by the said lessor to-
817 gether with and including all taxes levied on said loop line, and also, the sum of $62,500.00 in addition thereto; and provided further that the rent reserved herein shall commence to accrue so soon as the said loop line and its connections with the railroad of the said lessee, shall be completed and ready for operation; and provided further, that if when the above rental shall commence to accrue under this lease the said lessee shall not be ready to use the said loop line by reason of its railroad not being in operation, then and in that event, the said lessee its successors and assigns shall pay as its share of said minimum rent the sum of $62,500.00 per annum until it shall commence to use the said loop line or some part of it; and provided further, that if the said lessee before the completion of the entire loop line shall use the whole or any part of any one side of said loop line, the said lessee shall pay as rent therefor one half of the rent as first above stipulated, and agreed to be paid for the use of the whole of said loop line, or if the said lessee before the completion of the entire loop line shall use the whole or any part of two sides of said loop line, or shall use three sides of said loop line, then the rental for such use, shall be the whole rent hereinabove first stipulated and agreed to be paid for the use of the whole of the said loop line, and provided further that the payment of one-half of the rent above stipulated and agreed to be paid for the use of the whole or any part of one side of said loop line, shall amount to at least one-half of the minimum rent hereinabove agreed to be paid yearly; and provided further that so soon as the whole of said loop line shall be completed and ready for operation the right of the said lessee to use any portion of said loop line less than the whole thereof shall cease and determine.

818 Fifth. It is mutually agreed between the parties hereto that the rent reserved herein shall be begun so soon as the said loop line and its connection with the railroad of the said lessee are completed and ready for operation.

Sixth. It is further mutually agreed between the parties hereto that the operation of the said loop line and the running of trains thereon, and the conducting and regulating of stations situated thereon for the use of passengers, and the agents and collectors shall be managed by a joint superintendent to be appointed by the several elevated railroad companies using and operating said loop line.

Seventh. It is further mutually agreed between the parties hereto that all claims for damages and personal injuries through the opera-

tion of said loop line shall be borne by all of the companies using and operating said loop line in proportion to the rental paid by them respectively unless such damage and personal injuries shall be attributable solely to the company at fault or any one or more of the said companies, its agents or employés, in which case such claims for damages and personal injuries shall be borne by the guilty company, or companies.

Eighth. It is further mutually agreed between the parties hereto that no claim for damages to abutting or adjoining property shall be deemed to be a part of the expense of the operation or maintenance of the said loop line, but that the same shall be deemed and held to be a part of the original cost thereof.

Ninth. It is further mutually agreed between the parties hereto that only the necessary requisite number of employés shall
819 be engaged for the purpose of operating the said loop line, and that only the current rate of wages shall be paid.

Tenth. It is further mutually agreed between the parties hereto that in event the lessor shall obtain the consent of property-owners for the construction of the connection between the main line of the railroad of the said lessee and the said loop line and the said lessor shall also construct such connection that the lessee its successors and assigns shall and will pay the actual cost for obtaining such consent or consents and also the actual cost of making such connection.

Eleventh. It is further mutually agreed between the parties hereto that the duration of this contract shall be fifty years, or so much of that period as the parties hereto now have, or shall hereafter acquire the right and power to so contract, with the privilege of renewal or renewals for so long a period as by any ordinance or other sufficient authority the said lessor shall at any time be authorized to maintain and operate the said loop line.

In witness whereof the said parties hereto have caused these presents to be executed in duplicate by their respective presidents and secretaries, and their respective corporate seals to be hereto affixed the day and year first above written.

UNION ELEVATED RAILROAD COMPANY,

(Signed) By LE GRAND W. PERCE, *President.*

Attest:

(Signed) A. P. CLAUSONTHUE, *Secretary.*

NORTHWESTERN ELEVATED RAILROAD COMPANY,

(Signed) By D. H. LOUDERBACK, *President.*

Attest:

(Signed) HOWARD ABEL, *Secretary.*"

820 Cross-examination by Mr. KNIGHT:

Q. You are familiar with the various contracts that Mr. Herrick has just now introduced in evidence?
A. Yes.
Q. In reference to the loop?
A. Yes.
Q. And the use of the East Lake Street extension?
A. Yes.
Q. Will you explain the benefits to the Lake Street Elevated Railroad Company arising under those contracts?

Mr. BURRY: Objected to as immaterial.
The COURT: That is not cross-examination of anything he has said. The objection is sustained. If it is necessary for you to rebut upon that, it is all right.
Mr. KNIGHT: Well, but suppose I can show the consideration for the contracts has absolutely failed?
The COURT: The objection is sustained.

Mr. KNIGHT: Mr. Louderback, you have been asked in regard to a statement in an affidavit as to the payment of the liabilities of the road before the bonded indebtedness and you desired to explain that. Have you an explanation to make in regard to that?
A. The explanation that I desired to make was: We have always taken the position from the first, and did so at the interview in Mr. Mayer's office when Mr. Burry was present, that we proposed
821 to take the first money that the Lake Street road could obtain——

Mr. BURRY: I object to this. I simply ask him if he made such and such a statement.
The COURT: Go on.
Mr. BURRY: Exception.

A. In that statement he did not mean to include—to exclude——

Mr. BURRY: I object to what he meant to include or exclude in that statement.
The COURT: It is all speculation; there doesn't any part of it go to the facts. Go on.

A. That statement only refers, in speaking of secured liabilities, to bonds, and not to interest due. We expected to pay the interest out of the first money received, and I so stated to Mr. Burry in the interview of December 27th, that the first money we got——

Mr. BURRY: I object to that. The witness has been all over that interview and it don't relate to this at all. The witness has stated, he says, everything that occurred at that interview once.
The COURT: Let him answer.
Mr. KNIGHT: Proceed, Mr. Louderback.

A. —that we expected to take the first money we received and pay off the indebtedness which we owed the American Trust & Savings

bank, and as soon as they were paid off to this company, after
822 paying all liabilities on interest account, after that to go on and pay whatever floating indebtedness there might be, and in addition to that we stated to Mr. Burry, as the position of the Lake Street elevated road, that we had left the door open at all times to all of the bondholders to come in under the same terms and under the same conditions as the other debenture-holders, and that it was a question of judgment between the bondholders as to what was the best interest of the company in relation to themselves. That position we have still held, always have held, and expect to treat every bondholder exactly the same, as far as it is in our power, both as to interest payments and everything else.

Q. Mr. Louderback, has the Farmers' Loan & Trust Company, or Mr. Burry representing them, ever called upon you to furnish to them these contracts which they have just offered in evidence or copies of the same?

Mr. HERRICK: Objected to as not cross-examination.

The COURT: He may answer.

A. No, sir.

Mr. KNIGHT: At the time that this contract was made, in June, 1895, in regard to the guaranteeing of these debenture bonds by the Northwestern Elevated Railroad Company, did the Northwestern Elevated Railroad Company have a prior right to cross Lake street?

A. Yes, sir.

Q. And was not that a part of the understanding and
823 agreement, that in case this contract was made the Northwestern would waive its prior right to cross Lake street?

Mr. BURRY: Objected to as leading.

The COURT: Sustained.

Mr. KNIGHT: We are cross-examining their witness, your honor.

The COURT: It isn't cross-examination of anything they called out. They simply introduced the contracts.

Mr. KNIGHT: I desire to have it in the record, if your honor please—it is almost impossible to have Mr. Louderback come back here again—this question: Mr. Louderback, at the time of the making of the crossing contracts in June, 1895, how far upon East Lake street was the railroad built?

Mr. BURRY: Objected to.

The COURT: He may answer.

A. It was somewhere between Franklin street and Fifth avenue.

Mr. KNIGHT: At that time, where was the Northwestern to cross Lake street?

Mr. BURRY: Objected to as not competent.

The COURT: They are not doing it for cross-examination, I understand.

Mr. BURRY: No, but it is not competent to show the franchise in this way.

Mr. KNIGHT: Where was its line of road located?

A. Between La Salle street and Fifth avenue.

824 Q. La Salle street is east of Fifth avenue?

A. Yes, sir.

Q. East Lake street runs which way, Mr. Louderback—east and west, does it not?

A. East and west.

Q. And the crossing of the Northwestern is north and south?

A. North and south, between La Salle and Fifth avenue—midway between the two streets.

Q. Mr. Louderback, since the making of that contract, has the East Lake street extension, upon the point mentioned between Fifth avenue and La Salle street, been completed?

A. It has.

Q. To what point?

A. Wabash avenue.

Q. Has the loop referred to in these various contracts—has that been completed?

Mr. BURRY: Objected to.

The COURT: He may answer.

A. Partially so; the Wabash Avenue side of it has, and the Fifth Avenue side has been about one-half completed.

Mr. KNIGHT: Has the south side of the loop been completed?

A. No, sir.

Q. Mr. Louderback, I understood you to say in your examination before, that you had received from the loop company—the Lake Street Company had—on account of this Lake Street extension, a certain amount; you stated that yesterday afternoon.

825 A. I would like to make a correction. Without looking at my record, I made an erroneous statement. I said the amount was 481,000 and it should have been 441,000, of which we have received 141,000, and I have a check in my possession at present of the Lake Street road for the payment of $300,000, to be paid after we get rid of this burden that the Farmers' Loan & Trust Company has put on us. We can get that money quickly enough, but not until after this thing is settled, because they would not part with their money, the Union elevated, unless the court had adjudicated on this contract.

Q. I will ask you now as our witness in rebuttal, Mr. Louderback, to explain the benefits *of* the Lake Street Elevated Railroad Company receive- in these various loop contracts so called.

Mr. BURRY: We object to it.

The COURT: Objection overruled. Let him answer.

A. My time is very hard to get, Mr. Burry. I have fourteen companies——

Mr. BURRY: I want to raise an objection. The question here is, What benefit will the Lake Street Company receive should it enter into the Union loop? Now, I submit, if the court please, that that is opening a flood that we ought not to consider, in view of the very narrow issues of this bill.

The COURT: For what purpose did you offer the proof?

Mr. BURRY: We offered the proof only for this purpose; our idea in it was this: that this company says that we are proceeding in an inimical way, a very big allegation in the bill; that we are proceeding in an inimical way towards the property and for the purpose of despoiling it, and we wanted to show this: that a large part of the property of this mortgage—that one of the most valuable property is for the right of franchise, and now that they are selling this property, a very valuable grant for the life of the company—in fact, the most valuable part—we say that such conduct as that plainly calls for foreclosure.

826

The COURT: You are anticipating the question. You offered proof tending to show the making of certain contracts with the Union loop.

Mr. BURRY: Yes.

The COURT: The object of which is to show that that will diminish the estate. Now, haven't they the right upon that point to show any fact which might effect that question? They ought to show the fact, if there is any, so that the whole matter may be considered and not simply one side, it seems to me. If there is another side to it, let's have it.

Mr. BURRY: As against the mortgage?

The COURT: On the theory of your mortgage the trustee assumes to do what is for the best interest of the persons affected by the mortgage, the bondholders on the one side and the property on the other. Now, is it doing what it said is the question, and the trustee is presumed to have all of the information which the court will have on that question. Why let the court take a partial view?

827

828 The WITNESS: There is one statement that Mr. Burry made there that I would like to set the court right on.

Mr. BURRY: Mr. Louderback, it is not necessary for you to reply to our arguments on these questions.

A. You are quoting me, Mr. Burry, and I think I should be allowed to state it as it is.

Mr. KNIGHT: What he says in argument does not count. He is not on the stand. He won't say it on the witness stand.

A. The contracts referred to and the sale referred to, as Mr. Burry calls it, to the Metropolitan do not in any way, shape, or manner affect the security of these bondholders in the Lake Street road. Nothing passes under those contracts in regard to the property. It is simply a user, and one which the old management of the Lake Street were trying to arrange before we took hold of the property, and which the board of directors approved——

Objected to by counsel for defendant.

Mr. HERRICK: The documents will speak for themselves. We can discuss their legal effect. I do not want Mr. Louderback's opinion on them.

A. The effect of those contracts on the Lake Street road will be that it will put us in funds to go ahead and put the road in shape,

equipped with the latest appliances of electrical propulsion, and in addition it makes all the roads of Chicago homogeneous, all the elevated roads, thereby bringing passengers from the other ele-
829 vated roads to the Lake Street, whereby they can transfer from one to the other, and we believe it will very materially enhance the business of the Lake Street road on its present extension. In addition to that, the contracts provide that we shall have the right of user over the balance of the loop line. Therefore we believe on conservative estimates it will increase its daily traffic 10,000 passengers a day. If the Lake Street road elects, it need not use any other portion of the loop whatever. They can simply use the extension for its own uses.

Mr. KNIGHT: That is the part down to Wabash avenue on Lake?

A. Yes, sir; The arrangement with the Northwestern elevated railroad was absolutely necessary and essential to the Lake Street road in order to build its Wabash Avenue extension. If it had not made that contract the Northwestern elevated under its ordinance could have stopped the Lake Street from building that extension unless they went 16 feet above the top rail of the Northwestern, crossing Lake street, which would have rendered it impossible for it to have had any station in Lake street where the public could get at it, and it would have been up at a height of 30 or 40 feet.

Q. They could not get across the Lake Street bridge?

A. They would not have had room to go up and come down at Wabash avenue. It would have rendered the Lake Street extension impossible unless some arrangement was made with the Northwestern.

Q. They had already acquired prior rights there on Lake
830 street?

Objected to by counsel for defendants as leading.

A. The Lake Street road without the contract and without the use of the Union elevated would have been unable at the present time to have gone on and equipped its road electrically, and I state it as a fact, because a person in my position does not allow himself to guess at things, that the equipping of the road electrically will save the Lake Street road at least $10,000 a month in its expenses.

The COURT: That was stated yesterday.

A. Those are considerations that I think make those contracts perfectly proper for the Lake Street road and are in its interest entirely.

Mr. KNIGHT: Weren't those contracts which have been offered in evidence in controversy in the case filed by William Ziegler in the United States court for the northern district of Illinois?

Objected to by counsel for defendants.

Mr. KNIGHT: I offer the record itself in evidence on that point. We have a certified copy of the record here which I will offer.

Objected to by counsel for defendants as immaterial and irrelevant.

The COURT: He may answer the question as to the fact.

Mr. KNIGHT: This is the bill; I offer it.

The COURT: That is not competent at this time.

Mr. KNIGHT: And the opinion of Judge Showalter, which
831 was made part of the record, and an adjudication had upon the contract.

The COURT: You cannot now offer that copy.

The WITNESS: The contracts, as my recollection serves me, were all in that case with the exception of the contract——

Objected to by counsel for defendants.

The COURT: If you intend to offer the record the objection is sustained.

Mr. KNIGHT: Very well; I offer the record.

The COURT: Then strike out what he says about it.

Recross-examination.

By Mr. BURRY:

Q. Mr. Louderback, a little while ago you stated some things that you said you told Mr. Burry at the conference at Judge Moran's office, did you not?

A. At Mayer, Kraus & Mayer.

Q. Now, had you forgotten all about those statements when you stated yesterday that you had given all that occurred at that interview?

A. I did not state that I had given all that occurred at that interview. I simply answered the direct question which you gave me yesterday.

Q. In regard to this Northwestern and Lake Street crossing that you have spoken of, which company first acquired the right on Lake street at that crossing?

832 A. The Northwestern elevated.

Q. Did it acquire the right to cross Lake street before the Lake Street Elevated Company acquired its right to go along Lake street?

A. Yes, sir.

Mr. JUDAH: East Lake street?

A. East Lake street.

Mr. BURRY: How far south has the construction of the Northwestern Elevated Railroad Company now come?

A. Fullerton avenue.

Q. How far north of Lake street is that?

A. About two miles.

Q. Fullerton avenue?

A. Yes. North avenue is one mile and Fullerton two.

Q. Is not Chicago avenue one mile, and North avenue two, and Fullerton three?

A. Yes; that would be three miles.

Mr. KNIGHT: In regard to the answer just made there, state how much money the Northwestern has expended and how far it has gone with its work of construction.

A. It has expended up to the present time something over four million dollars, and we should have started the construction right at Lake street had that arrangement not been made.

Q. You had our iron-work ready there for it?

A. Yes, sir; had it all made.

Q. When will you be down to Lake street? How soon do you anticipate?

A. Probably by January next year.

Q. You have your foundations in nearly down to there?

A. We have them down to Michigan and Wells street.

833 Q. How many miles is that? How many blocks from Lake?

A. About three blocks.

Q. You have got the structure built on Fifth avenue, I understood you to say a while ago, a part way down?

A. By the loop company.

Q. What kind of a depot do you propose to build at Fifth avenue with reference to the transfer of passengers between the Northwestern and Lake Street?

Objected to by counsel for defendant The Farmers' Loan & Trust Company as immaterial. Objection sustained by the court; to which ruling of the court counsel for complainant then and there duly excepted.

The complainant here rested. And thereupon the defendants, to maintain the issues upon their part, introduced the following evidence, to wit:

Mr. HERRICK: The complainant offered in evidence, if the court remembers, the bill filed in the circuit court by the Lake Street Railroad Company *vs.* William Zeigler and others. That was offered yesterday over our objection. I don't recall whether the *ex parte* order for an injunction itself was offered in connection with it.

Mr. KNIGHT: Yes; I offered in evidence the bill filed by The Lake Street *vs.* William Zeigler, together with the order of court in that case granting a writ of injunction.

(Counsel for said defendant, The Farmers' Loan & Trust
834 Company, thereupon offered and read in evidence the following:)

First. The order of the Cook county circuit court transferring the said cause to the circuit court of the United States, entered in said circuit court of Cook county on the 23rd day of January, A. D. 1896.

Second. The motions of the several defendants to dissolve the injunction, said motions having been filed February 22, 1896, in said cause in said United States circuit court.

Third. The order of the said United States circuit court overruling the motion to remand said case, said order having been entered January 30th, 1896.

Fourth. The answer of William Ziegler, sworn to, filed February 19th, 1896, in said cause in said United States circuit court.

Fifth. The separate answers (filed in said United States circuit

court in said cause on February 17th, 1896), together with the affidavits filed therein on the same day in said last-mentioned court (in support of said answers of William R. Peters, as the owner of ten bonds; of George Cleveland, as the owner of twenty-one bonds; of James B. Entwistle, as the owner of five bonds; of Oliver A. McMahon, as the owner of five bonds; of Lawrence E. Ellis, as the owner of four bonds; of James B. Ryan, as the owner of twelve bonds; of Lizzie Wentworth Wright, as the owner of five bonds; of Effingham H. Nichols, as the owner of fifty bonds; of James V. S. Woolley, as the owner of ten bonds; of Jere Johnson, Jr., as the owner of ten bonds; of William M. Van Anden, as the owner of fifty bonds; of Charles Smith, as the owner of fifteen bonds).

Each and every of the above offers were objected to by counsel for complainant. Objection overruled by the court; to
835 which ruling of the court counsel for complainant then and there duly excepted; (which said order of the Cook county circuit court, entered therein on said January 23rd, 1896, and which said motions (filed February 22, 1896, in said United States circuit court) of the several defendants to dissolve the injunction, and which said order of said United States circuit court, entered therein on said January 30th, 1896, overruling the motion to remand, and which said answer of said William Ziegler, and which said other answers and affidavits last above mentioned were thereupon read in evidence respectively in the words and figures following, to wit:

836 STATE OF ILLINOIS, } *ss.*:
County of Cook, }

In the Circuit Court of Cook County.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, WILLIAM M. VAN ANDEN, CHARLES SMITH, JAMES B. RYAN, WILLIAM R. PETERS, JERE JOHNSON, JR., JAMES V. S. WOOLLEY, OLIVER A. McMAHON, EDWARD ENTWISTLE, LAWRENCE E. ELLIS, LIZZIE WENTWORTH WRIGHT, The American Trust and Savings Bank, Trustee, and The Farmers' Loan and Trust Company, Cotrustee, Defendants.
} Bill. 151,543.

William Ziegler, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright, defendants herein, having within the time provided by law filed their joint and several petition, and the said William Ziegler his petition for the removal of this cause to the circuit court of the

United States for the northern district of Illinois, northern division, and having at the same time offered with each of said petitions a bond in the sum of two thousand dollars ($2,000), with good and sufficient surety, pursuant to statute and conditioned according to law, and all the parties having been notified:

837 Now, therefore, this court hereby accepts and approves said bonds and accepts said petitions and orders that this cause be removed to the next circuit court of the United States for the northern district of Illinois, northern division, pursuant to the statutes of the United States, and that all other proceedings of this court herein be stayed.

838 "UNITED STATES OF AMERICA, } ss.:
Northern District of Illinois, Northern Division, }

In the Circuit Court of the United States.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs.
WILLIAM ZIEGLER ET AL. }

And now comes the defendant William Ziegler, by his solicitors, Herrick, Allen, Boyesen & Martin, and moves the court to dissolve the injunction heretofore granted in the above cause.

HERRICK, ALLEN, BOYESEN & MARTIN,
Solicitors for said Defendant William Ziegler."

839 "UNITED STATES OF AMERICA, } ss.:
Northern District of Illinois, Northern Division, }

In the Circuit Court of the United States.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs.
WILLIAM ZIEGLER ET AL. }

And now come the defendants, George Cleveland, Effingham H. Nichols, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, and Lizzie Wentworth Wright, by Herrick, Allen, Boyesen & Martin, their solicitors, and severally move the court to dissolve the injunction heretofore granted in the above cause.

HERRICK, ALLEN, BOYESEN & MARTIN,
Solicitors for said Above-mentioned Defendants."

840 "U. S. C. C., N. D. Ill., N. Div.

THE LAKE ST. EL. R. R.
vs.
ZIEGLER ET AL.

THURSDAY, *Jan.* 30, '96.

The court being now fully advised in the premises, it is ordered that the complainant's motion to remand this cause be, and the same is hereby, overruled; to which ruling of the court complainant excepts."

(Order entered by Judge Grosscup.)

841 *Answer.*

UNITED STATES OF AMERICA, *Northern District of Illinois*, } ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, WILLIAM M. VAN ANDEN, CHARLES SMITH, JAMES B. RYAN, WILLIAM R. PETERS, JERE JOHNSON, JR., JAMES V. S. WOOLLEY, OLIVER A. MCMAHON, EDWARD ENTWISTLE, LAWRENCE E. ELLIS, and LIZZIE WENTWORTH WRIGHT, Defendants. } In Chancery.

The separate answer of William Ziegler, one of the defendants, to the amended bill of complaint of the above-named complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit of exception to the many errors and uncertainties in said bill of complaint contained, for answer thereto or to such parts thereof as he is advised it is necessary for him to make answer unto, says:

First. That he admits that the said complainant is a corporation organized under the laws of the State of Illinois, and that the complainant was so organized in the month of August, 1892,
842 with a capital stock of five million dollars, divided into fifty thousand (50,000) shares of one hundred dollars ($100.00) each, as alleged in said amended bill; that on or about the 23rd day of December, 1892, this defendant was elected a director of said complainant.

That this defendant has no knowledge as to the alleged contract of sale by said McDonald to said Underwood & Green of a majority of the capital stock of the complainant prior to the said subscription by the said Miller, as alleged in said amended bill.

This defendant admits that he was informed prior to his said

election as a director that said Underwood & Green had contracted to purchase certain capital stock of said complainant, but whether the capital stock so contracted for constituted a majority of the said capital stock this defendant was not informed.

This defendant expressly denies that said alleged controlling interest in said stock was so given to said Underwood & Green, with the knowledge of this defendant, to obtain a construction contract for said road at a price in excess of its real worth.

Second. This defendant, further answering, says that at the time of his said election as a director of said complainant he was and ever since has been a resident of the city of New York; that after his said election as a director of said company he was not in the city of Chicago at the time any meetings of directors of said company were held and did not attend any of said meetings until the meeting of the board of directors of said company held on the 2nd day of February, 1893, referred to in said amended bill.

843 This defendant admits that he attended a meeting of said board of directors held on the 2nd day of February, 1893, and also an adjourned meeting of said board held on the 3rd day of February, 1893, and that at said meeting held on said 3rd day of February, 1893, the said resolution in regard to the said two notes of said John H. Miller, set forth in said bill, was unanimously passed by said board; and this defendant avers that the records of said meeting show that seven out of the nine constituting said board of directors were present at said meeting and all voted for said resolution; and this defendant admits that it may be, as alleged in said bill, that this defendant seconded said resolution.

This defendant further says that prior to said meeting he had no knowledge or information as to the said Miller or his said subscription, except that it appeared from the record of a meeting of said board held on the 28th day of January, 1893, hereinafter referred to, that said Miller had subscribed to said capital stock to said amount of one million five hundred thousand dollars ($1,500,000); that he has not and never had any knowledge or information as to the alleged youth or want of means of said Miller, save from the allegations of said amended bill.

That at the time of the passage of said resolution the records of said board of directors showed that at a prior meeting of said board, held on the 28th day of January, 1893, at which there were present Directors Roche, Witbeck, Moffitt, Campbell, Knight, and Thompson—being six of said nine directors—it was, on motion of Mr. Thompson, seconded by Mr. Witbeck, voted unanimously that the said board of directors ratify, approve, and confirm the subscription of said Miller for fifteen thousand (15,000) shares of the

844 capital stock of said company; that in voting for said resolution adopted at said meeting of February 3rd, 1893, with the other directors, this defendant did so in good faith and for reasons which he believed to be satisfactory and sufficient at the time.

Third. This defendant, further answering, admits that at a meeting of said board of directors held on the 1st day of February, 1893, a

resolution was adopted that a special meeting of the stockholders of said company be called for the purpose of submitting to said stockholders the question of increasing the capital stock of said company to ten million dollars ($10,000,000), and that at said meeting a resolution was also adopted that a special meeting of said stockholders be called for the purpose of submitting to a vote of said stockholders the question of issuing six million five hundred thousand dollars ($6,500,000) five (5) per cent. gold bonds and securing the same by a trust deed on the property, rights, and franchises of the complainant; and this defendant avers that the records of said meeting show that six of said nine directors were present at said meeting; that this defendant was not present, but that this defendant and seven other- of said directors subsequently signed an approval in writing of the record of said meeting.

And this defendant admits that thereafter, at a special meeting of the stockholders of said company, it was voted to increase the capital stock of the complainant to ten million dollars ($10,000,000).

Fourth. This defendant, further answering the said allegations of said bill as to action of the board of directors of said complain-
845 ant with reference to the said contract with said Underwood & Green and this defendant's alleged connection therewith, says that the records of said board of directors show the following action taken by said board as to said contract with said Underwood & Green:

That at a meeting of said board of directors held on the 28th day of December, 1892, at which there were present Directors Roche, Shaw, Deere, Thompson, Campbell, Fitzgerald, Witbeck, and Knight, this defendant not being present, Mr. Thompson presented the following resolution and moved its adoption:

"Resolved, That the president, Messrs. Shaw, Witbeck, and Deere, directors, be, and they are hereby, appointed a committee for the purpose of taking such action as they may deem advisable for the purpose of providing for the construction and completion of the lines of the road for this company, together with all necessary equipment and appurtenances. Any contract or contracts therefor shall before execution be approved by the board of directors of this company.

The motion having been seconded, the roll was called upon the adoption of the same, and seven ayes being cast for the resolution and one, that of Director Fitzgerald, against it, the chairman declared the same adopted."

That at a meeting of the board of directors held on December 31, 1892, at which there were present Directors Roche, Campbell, Fitzgerald, Knight, and Thompson, this defendant not being present, the president presented the following communication:

"CHICAGO, *December* 31, 1892.

"To the board of directors of the Lake Street Elevated Railroad Company.

846 "GENTLEMEN: Your committee, who has had in consideration the making of a contract for the construction of the

proposed line of railroad of this company and the equipment and stations therefor, beg leave to report that we have had numerous sessions with Messrs. Underwood & Green, with whom it is proposed to make the contract for said work, and that while we have substantially agreed upon a contract, yet there are some details of the same remaining to be perfected, and we therefore ask for further time in which to make the final report in said matter.

"Respectfully submitted.

"JOHN A. ROCHE,
"*Chairman of the Committee.*"

"That thereupon, on motion, the committee were granted further time as requested."

That the record of said meeting held on the 2nd day of February, 1893, at which there were present eight of said directors, including this defendant, to wit, Directors Roche, Witbeck, Knight, Campbell, Thompson, Moffitt, Ziegler, and Shaw, shows the following:

"Thereupon the president submitted to the board of directors the proposed form of contract to be made with Messrs. Underwood & Green for the construction and equipment of the road. After spending the balance of the day in the discussion of the matter of said contract, the board of directors, on motion of Mr. Campbell, adjourned to meet at 10 o'clock a. m. February 3rd, 1893."

That the record of said meeting of said board of directors held February 3rd, 1893, at which there were present seven of said directors, including this defendant, to wit, Directors Roche, Shaw, Moffitt, Ziegler, Witbeck, Knight, and Campbell, shows the following proceedings:

847 "The committee heretofore appointed on December 28, 1892, to take such action as they might deem advisable for the purpose of providing *of* the construction and completion of the lines of the road of this company, by Mr. John A. Roche, chairman of the committee, reported that since their report of December 31, 1892, they had made no further progress in the making of the contract with Messrs. Underwood & Green for the construction of the lines of the road, and that it had made no further effort in that direction, as such contract was being considered by the board of directors.

Thereupon, on motion of Mr. Moffitt, seconded by Mr. Witbeck, the report of the committee was accepted and the committee discharged from further service.

Thereupon, on motion of Mr. Ziegler, duly seconded by Mr. Moffitt, the board resumed the consideration of the contract for the construction of the lines of the company which was under consideration at the time of the last adjournment.

After several hours' discussion a form of contract was arrived at which met the approval of the board of directors and Messrs. Underwood & Green. A draft of such contract as finally agreed upon was presented to the board of directors, and after being read to the board of directors Mr. Moffitt moved that such contract as presented and read to the board of directors be accepted by the

company, and the president and secretary of the company be authorized and directed in the name of the company and for and on behalf of the company to execute such contract."

That at a meeting of said board of directors held on the 4th day of February, 1893, at which there were present six of said directors, including this defendant, to wit, Directors Roche, Shaw,
848 Ziegler, Witbeck, Campbell, and Knight, the following proceedings were had:

"The president and attorney of the board submitted a form of contract which had been finally agreed to since the adjournment of yesterday's meeting.

Mr. Witbeck moved, and seconded by Mr. Campbell, that the president and secretary be, and they are hereby, authorized to execute and deliver said contract so submitted; which motion, being duly put, was unanimously adopted."

And this defendant admits the action of said board of directors on said contract and this defendant's connection therewith as shown by the said records of their proceedings as hereinbefore set forth.

Fifth. This defendant denies that prior to the making of said contract between said Underwood & Green and said complainant dated February 4th, 1893, or at any time, this defendant was interested with said Underwood & Green in obtaining said contract, or that this defendant furnished said Underwood & Green with assistance, from time to time, for the purpose and to the end of enabling them, the said Underwood & Green, to obtain said contract, or that this defendant was interested in said contract in connection with said Underwood & Green at the time it was let to them or at any time, or that this defendant, subsequently to the letting of said contract to said Underwood & Green, furnished them money or other assistance to enable them to carry out said contract; and this defendant expressly avers that this defendant had no interest, legal or equitable, express or implied, in said contract or the profits
849 of the same or any agreement for any such interest, either before said contract was made or at any time thereafter.

That this defendant had been acquainted with the said Frank L. Underwood for many years; that at some time prior to the election of this defendant as a director in said company said Underwood made application to this defendant to make a loan to said firm of Underwood & Green, and thereupon this defendant did loan to said Underwood & Green the sum of thirty thousand dollars ($30,000.00), taking their note therefor drawing interest; that at the time said loan was made there was no agreement, express or implied, that this defendant should receive any other consideration for the same than the repayment of the amount loaned, with interest, in accordance with the note given therefor, and that thereafter said loan was repaid to this defendant by said Underwood & Green, as hereinafter set forth.

Sixth. This defendant, further answering the allegations of said bill as to the terms and provisions of said contract dated February 4th, 1893, between said Underwood & Green and the complainant, refers to the copy of said contract attached to said amended bill as

"Exhibit A," which this defendant believes to be a true and correct copy of the same.

This defendant admits that he understood at and prior to the time the said contract was made that said Underwood & Green held a majority of the capital stock of said complainant, and that in case of said increase they would have the right as the holders of such majority of stock to subscribe for their *pro rata* amount of such increase of stock, and this defendant is advised and avers the fact to be that as the holders of such majority of stock said Under-
850 wood & Green did not have the control of the business and affairs of said company, but that such control was vested by law and under the charter of said company in its said board of directors.

This defendant admits that the said capital stock of the complainant was increased from five million dollars ($5,000,000) to ten million dollars ($10,000,000), as alleged in said amended bill, and that the complainant duly made, executed, and delivered its mortgage or deed of trust to said American Trust & Savings bank and the Farmers' Loan & Trust Company, as alleged in said amended bill, and this defendant believes that "Exhibit C" to said amended bill is a correct copy of said mortgage or deed of trust.

Sixth. This defendant admits that the said Underwood & Green proposed to raise the funds necessary to carry out the said contract with said complainant in large part by means of what is commonly known and styled as an underwriting agreement, and that it was provided by said contract that said Underwood & Green should obtain an underwriting agreement within the time provided in said contract to the amount of four million dollars ($4,000,000) of said bonds, at ninety (90) cents on the dollar, with the provision that the board of directors of the complainant should have the right to extend such period for said underwriting to such time as they might deem just and reasonable, as by reference to said copy of said contract will more fully appear; and this defendant admits that in accordance with said provision of said contract said Underwood & Green caused to be prepared an underwriting agreement, and that this defendant believes that "Exhibit D," attached to said amended bill, is a correct copy of the same.

This defendant further says that at the solicitation of said
851 Underwood, on behalf of said Underwood & Green, this defendant originally agreed to take from said Underwood & Green, on the terms of said underwriting agreement, said first-mortgage bonds of said company to the amount of two hundred and fifty thousand dollars ($250,000.00), and thereupon signed said underwriting agreement, agreeing to take said bonds to that amount upon the terms provided in said agreement; that thereafter and before the time limited in said contract for obtaining subscriptions to said underwriting agreement to the amount provided in said contract this defendant was applied to in New York by said Underwood, on behalf of said Underwood & Green, and John A. Roche, the president of said complainant, and Clarence A. Knight, its attorney, to increase the amount of the said bonds agreed to be

taken by him; that it was stated to this defendant in connection with said application that additional subscriptions to a large amount were necessary to enable said Underwood & Green to carry out their said contract; that it was not desirable that the directors of said company should extend the time for the underwriting under the provision of said contract, for the reason that such extension might release those who had already subscribed to said underwriting agreement; that thereupon said Underwood, on behalf of said Underwood & Green, proposed to this defendant that if he would increase the amount of the said bonds agreed to be taken by him at said price of ninety (90) per cent. of the par value thereof to the amount of five hundred thousand dollars ($500,000.00) they would increase the amount of stock to be paid by them as a bonus out of the stocks to be received under their said contract so as to give this defendant an additional bonus of twenty-five (25) per
852 cent., being a total additional bonus of one hundred and twenty-five thousand dollars ($125,000) of said stock.

That said Underwood also stated to this defendant that said Underwood & Green had made similar propositions to others in order to secure the amount of subscriptions to said bonds required under their said contract, which had been or would be accepted, and that if said proposition to this defendant was accepted by him they would be thereby enabled to obtain the full amount of subscriptions to said bonds required under their said contract.

That thereupon this defendant subscribed for and agreed to take said bonds to the said amount of five hundred thousand dollars ($500,000), paying therefor ninety (90) per cent. of the par value on the terms of the said underwriting agreement, and the said Underwood & Green, in consideration of said increased subscription, agreed to give to this defendant the said additional bonus of stock out of the stock to be received by them under their said contract.

And this defendant says that the said arrangement between himself and said Underwood & Green, whereby he was to receive said additional bonus of one hundred and twenty-five thousand dollars ($125,000) of stock in consideration of his said increased subscription for said bonds hereinbefore set forth, was not only an arrangement which did not in any way affect the complainant, but was also well known to the officers of the complainant; that this defendant had correspondence from time to time with the said complainant and its officers concerning the delivery, on behalf of said Underwood & Green, of said $125,000.00 of stock to him under said agreement; that on the 27th day of July, 1893, Clarence A.
853 Knight, who then was a director of said complainant, and also the attorney for the complainant and acting on behalf of the complainant, wrote to this defendant concerning the said stock so to be received by this defendant as follows:

"You understand, of course, under Mr. Underwood's contract with the company he is not entitled to draw any stock until a certain amount has been paid in to the trust company. That has not been quite done yet, and Mr. Roche wishes to get it as near to that

point as possible before advancing the stock to Mr. Underwood, in order to give you your amount. The stock will be advanced to you in a few days, as every one here is willing to do it."

That afterwards, to wit, on the 4th day of August, 1893, the said Clarence A. Knight, so at said time being a director of said complainant, and also its attorney, wrote to this defendant as to said stock, among other things, as follows:

"You shall have the stock. I told you when in New York that we would advance the stock to Underwood so he could settle with you, but you *was* to hold us harmless in so doing. I have been anxious to get the matter in such shape that we would not have to ask from you any guaranty. Have the matters about in such condition that no guaranty will be required. If you pay in no guaranty protection will be required, but will advance the stock now and take the risk."

That thereafter this defendant, by his secretary, J. M. Coonan, wrote to said Knight concerning said stock as follows:

"In reference to your letter Mr. Ziegler directs me to say that this his contract with Mr. Underwood really does not concern the company, as he told you when here, and that accordingly he
854 could not agree to hold the latter harmless for any action it may take. He supposed you had fully understood this."

And on, to wit, the 8th day of August, 1893, this defendant, by his secretary, J. M. Coonan, again wrote to said Knight as to said stock as follows:

"Your registered letter of the 5th, with enclosures, handed to Mr. Ziegler today on his arrival at the office. As I have already written you, he totally disclaims any promise or understanding as to any possible liability to the company or Mr. Roche for the issuing of the stock, as per his agreement with Mr. Underwood. He is also without reply as to the amount of cash paid in at Chicago to date. He wired you this a. m., 'Shall accept stock only without condition.'"

And again, on September 20th, this defendant, by his said secretary, J. M. Coonan, wrote to John A. Roche, president of the said complainant, as to said stock as follows:

"Mr. Ziegler directs me to say that the $125,000 stock sent on some time ago he will accept only on condition that payments on his subscription be required only *pro rata* with payments made by the other subscribers."

And at the same time and on the same date he caused to be written to F. L. Underwood, one of the said contractors, as follows:

"F. L. Underwood, Chicago:

Mr. Ziegler directs me to write you, and also Mr. Roche, that he will accept the $125,000 stock (25 % on $500,000) only on condition that payments on his subscription be required *pro rata* with payments as made by the other subscribers."

855 This defendant denies that before said contract between said Underwood & Green and the complainant was entered into it was agreed between this defendant and the said Underwood

& Green, secretly or otherwise, that this defendant was to sign said underwriting agreement for a large number of said bonds, and was to receive from said Underwood & Green large benefits and advantages which other signers of said underwriting agreement should not receive; and this defendant avers that the only agreement by which this defendant was to receive any amount of said stock or other consideration other than said bonds and an equal amount of the same in said stock was said agreement entered into long after said contract was made and long after said underwriting agreement had been drawn up and signed by different parties in the manner and under the circumstances hereinbefore set forth.

Eighth. This defendant, further answering, says that after the said Underwood & Green had become entitled to receive certain bonds and stocks under their said contract, their said note for said loan of thirty thousand dollars ($30,000) being overdue and unpaid, said Underwood & Green proposed to this defendant to accept in payment of said note said bonds and stocks in lieu of cash, and thereupon this defendant agreed with said Underwood & Green to accept from them an agreed amount of said bonds and stocks in full payment of said note, and thereafter, in pursuance of said agreement, this defendant received said stocks and bonds in payment of said note, and surrendered and cancelled said note so paid.

And this defendant denies that he has at any time received from said Underwood & Green any stocks, bonds, or other property
856 or any other consideration whatsoever other than the said stocks and bonds so received in consideration of his said undertaking to subscribe for and take said five hundred thousand dollars ($500,000) of first-mortgage bonds, and the said stocks and bonds so received in payment of said note as hereinbefore set forth.

Ninth. This defendant, further answering, says that the said stock of the said complainant agreed to be issued to said Underwood & Green under their said contract, and by them to be given to subscribers to said underwriting agreement, and to this defendant, as hereinbefore set forth, at the time of said contract and of the delivery of the same, had no other than a possible prospective value; that the said stock, subsequently and after said road was built, sold on the market at a price as low as seven (7) cents on the dollar, and that the entire amount of stock so received by this defendant was sold by him in July, 1894, at eighteen (18) cents on the dollar, which was above the then market price.

Tenth. This defendant, further answering, denies that the actual cost to the complainant of building said railroad was said sum of $16,593,000 or any such sum, or that it was provided by said contract that said Underwood & Green should receive for building said railroad $11,710,000.00 or any such sum. *In* the contrary, this defendant avers that the said contract with the said Underwood & Green for the construction of said railroad, whereby the said Underwood & Green were paid an agreed amount of the bonds and stock of the complainant, was in the form in common use for the building of railroads, and that the actual cost of said railroad was not the

par value of said bonds and stock as alleged in said amended bill or any such amount.

857 And this defendant denies that the true value of the work done by said Underwood & Green for the complainant was only the said sum of $3,317,000.00. On the contrary, this defendant avers that the true value to the complainant of said railroad was a much larger sum, and this defendant avers that said contract was entered into by said board of directors, in the manner hereinbefore set forth, after extended consideration of the matter and much negotiation as to the terms of the same, as shown by the records of the proceedings of the board of directors hereinbefore set forth.

And this defendant avers that as one of said directors he approved said contract in good faith, believing the same to be a proper contract and as favorable as could be obtained under the circumstances.

Eleventh. This defendant, further answering, says that by said contract between said complainant and said Underwood & Green it was provided that the chief engineer and president of the complainant should, on or before the 10th day of each month, make an estimate of the value of the work, materials, equipment, etc., and should certify to such estimate in writing, and thereupon there should be paid to the contractors, by an order drawn on the financial agents, such an amount of said bonds as taken at ninety (90) per cent. of the par value thereof would equal the value of the work, materials, and equipment, as the same should appear from such order, and also that the financial agent should deliver to said contractors, in addition to the said bonds, an amount in shares of stock equal to the face value of the bonds, and that upon the final

858 completion of the work all bonds, shares, and money that might remain in the hands of the financial agents should be turned over to the contractors.

This defendant further avers that it was also provided by said contract that John A. Roche, president of said complainant, should determine as to any matter arising under the contract in the first instance, except as therein otherwise specifically provided, and in case the contractors should not be satisfied with the decision of said Roche, then, in that case, the matter so in dispute should be submitted to John A. Roche, Gilbert B. Shaw, and F. L. Underwood, or Willard R. Green in the place of said Underwood, and that the decision of either two of the three should be final and conclusive.

This defendant, further answering as to the allegation of said amended bill that said Underwood & Green did not obtain subscriptions to said underwriting agreement by responsible parties within thirty (30) days from the date of their said contract, dated February 4th, 1893, this defendant denies said allegation; and this defendant says that in a letter from said John A. Roche, president of the complainant, signed "John A. Roche, pres't Lake Street E. R R.," dated at Chicago March 3, 1893, said Roche, as president, wrote to this defendant in New York as follows:

"Mr. Green mailed to Mr. Underwood last night a copy of the

Chicago underwriting, which he no doubt will show to you. I am in receipt of your telegram of this date, and have wired you that I have forwarded a certified copy of the underwriters' list, which I was unable to complete until I had received the New York list. Herewith you will please find a complete list of the subscribers, which covers the amount named in the contract with Under-
850 wood & Green. I trust you will find the same satisfactory. All of these subscriptions are from good parties, and I can offer no objection to them."

And this defendant denies that he permitted said Underwood & Green to proceed with said work under their said contract after the time limited in said contract, or otherwise made default in the same. On the contrary, this defendant avers that the matter of the performance of said contract, both as to the time and manner of performance, except so far as the same was committed to the decision of said Roche and others, as provided by said contract, was considered and passed upon by said board of directors of said company in good faith, and that all matters of difference under said contract, including any claims of said company, were long since settled and adjusted between said company and said Underwood & Green.

This defendant, further answering, says that work was begun by said Underwood & Green under said contract shortly after the date of the same; that said work was carried on under the superintendence of the proper officers of the complainant, and payments were made from time to time on estimates made and certified in the manner provided in said contract; that the matter of the work done under said contract and the amounts due the contractors was considered and passed upon from time to time at different meetings of the board of directors, and that at a meeting of said board of directors, held March 9th, 1894, at which six of the said directors were present and acting, this defendant being absent, a committee of three reported to said meeting that the matter of taking possession and operating the road as constructed by Messrs. Underwood & Green under their contracts with the company had been
860 investigated by them, and that they recommend the adoption of a resolution, a copy of which was submitted; that thereupon said resolution was adopted accepting and taking possession of said railroad, with the provision that the acceptance was without detriment to the question as to whether any of the work in the structure and equipment was in accordance with the specifications and contracts. Thereupon said company took possession of and has ever since operated said railroad.

That on or about July, 1894, a majority of the capital stock of the complainant was purchased by the parties now owning or controlling the same, and thereupon an entirely new board of directors, with the exception of this defendant and Clarence A. Knight, was chosen, and subsequently new officers were chosen by said board of directors.

And this defendant further says on information and belief that thereafter the matter of said contract with said Underwood & Green was fully investigated by said new board of directors and officers, and

in October, 1894, a settlement was made between said complainant and said Underwood & Green, fixing the amounts due the latter, and said complainant gave to said Underwood & Green its notes for part or all of the balance then due, maturing in January and February, 1895; that when said notes came due certain claims were made by said complainant for allowances on account of alleged defects in the construction of parts of the work, and thereupon a full and final adjustment and settlement of said claims and all matters of difference was agreed upon between said complainant and said Underwood & Green, and in March, 1895, said settlement was consummated by the execution and delivery of mutual releases.

861 Twelfth. This defendant, further answering, says that all of the stock of said complainant received by this defendant at any time under said underwriting agreement or otherwise from said Underwood & Green was sold by him in July, 1894, said stock being purchased in the interest of those now owning the majority of the stock of said company; that this defendant now owns 400 of said first-mortgage bonds; that of said 400 bonds eight were recently purchased by this defendant in the open market; that of the remaining 392 bonds 145 were purchased by this defendant in the year 1894 at the price of fifty-two (52) cents on the dollar, and that the remaining 247 bonds were part of the said 500 bonds so purchased by this defendant at the price of 90 cents on the dollar, this defendant also receiving with the same said bonds of stock as hereinbefore set forth.

This defendant, further answering, says that each of the installments of interest on said bonds which came due during this defendant's ownership of the same and prior to January 1st, 1895, was paid by said company to this defendant at or about the time the same came due; that when the installment of interest payable on the 1st day of January, 1895, came due, the said complainant declined to pay the interest on any of its said first-mortgage bonds, except upon the terms that the coupons should be delivered uncancelled, to be held as security by the person or persons advancing the money to make such payment; that this defendant was urged and invited by said complainant to surrender his coupons upon the terms of said proposition, but this defendant declined so to do; that on the 1st day of July, 1895, default was made in the payment of all the coupons held by this defendant as well as all the coupons held by

862 other holders of said first-mortgage bonds; that in like manner default was made in the payment of the coupons coming due on all of said first-mortgage bonds on the 1st day of January, 1896; that different demands were made by this defendant for the payment of said coupons coming due on the 1st day of January, 1895, and the 1st day of July, 1895, in answer to which different communications were received by this defendant with reference to the same, both from said complainant and the trustees under said mortgage; that throughout said correspondence no claim or pretence was made that this defendant was not the just and lawful owner of said bonds and entitled to the interest thereon, and that as the result of said demands and correspondence all of said cou-

pons due January 1st, 1895, for interest on said 392 bonds held by this defendant were paid to this defendant, with interest thereon, in October, 1895, and this defendant attaches hereto copies of the said several demands by this defendant and communications to him from said complainant and trustees hereinbefore referred to, marked Exhibits "A," "B," "C," "D," "E," "F," "G," and "H."

Thirteenth. This defendant, further answering, admits that he now claims to be the owner of 400 of said bonds, and that George Cleveland, Effingham H. Nichols, William Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver H. McMahon, James Entwistle, described in said bill as Edward Entwistle; Lawrence E. Ellis, and Lizzie Wentworth Wright claim to be the owners of the number of bonds mentioned in said amended bill as held by them respectively; and this defendant admits that some of the persons named purchased their bonds from this defendant, but this defendant denies that any of said persons named claiming to own said bonds had any
863 knowledge or notice of any of the alleged facts and circumstances set forth in said amended bill other than the said underwriting agreement and terms thereof, and that certain of said persons in fact purchased the bonds held by them in the open market.

And this defendant denies that any of the persons named, except the said William R. Peters, is a friend and business associate of this defendant. On the contrary, this defendant says that certain of them this defendant has no acquaintance with, and, in fact, has never seen, to wit, James B. Ryan, Oliver H. McMahon, and Lawrence E. Ellis.

Fourteenth. This defendant, further answering, denies that said complainant has offered to pay to this defendant the amount which he paid for the said bonds and stocks obtained by him from said Underwood and Green, together with legal interest thereon, or that said complainant has demanded that this defendant surrender up to it the bonds and stocks obtained by him from said Underwood & Green, and this defendant is advised that if any such offer or demand had been made there was no obligation, legal or equitable, on this defendant to accept the same.

This defendant admits that this defendant and the other persons named now claim to be the lawful owners of the said bonds held by them and to be entitled to the possession thereof, and demand that the complainant recognize them as the lawful owners of said bonds and pay to them the interest on said bonds now overdue.

Fifteenth. This defendant, further answering, denies that this defendant and the other persons named are conspiring together to induce the said American Trust and Savings bank and said Farmers' Loan and Trust Company to take possession of said railroad
864 or to proceed to foreclose said mortgage, but this defendant admits that this defendant and the other persons named have heretofore served upon said American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a notice in writing demanding that they take possession of said rail-

road under the terms of said mortgage and proceed to foreclose said mortgage and otherwise enforce the provisions of the same by reason of the several defaults in interest on all of the said mortgage bonds as hereinbefore set forth.

Sixteenth. This defendant, further answering, says that since the filing of the original bill herein the said Farmers' Loan & Trust Company has filed its bill of complaint in this honorable court, setting forth said defaults in the payment of interest and otherwise under said mortgage, and praying for the foreclosure of the same, and alleging the refusal of the said American Trust & Savings bank to join in said bill or otherwise take action to enforce said mortgage, as by reference to said bill of complaint now on file in this court will more fully appear.

Seventeenth. This defendant, further answering, says that he has no knowledge whether any other person than this defendant and the other persons named uniting with him in said demand, as hereinbefore set forth, has made any demand upon said trustee or cotrustee, and that as to the allegation of said bill that persons owning more than 6,000 of said bonds do not desire the said trustee to foreclose the said mortgage this defendant says that said 6,000 bonds referred to are now in fact held by the Northern Trust Company as security to secure the payment of certain debentures heretofore issued by said complainant, and that the same are in
865 fact controlled by said complainant.

Eighteenth. This defendant, further answering, says that said complainant is barred by its laches and acquiescence, as appearing from the facts set forth in said amended bill and this answer, from seeking the relief prayed by said amended bill or any part thereof against this defendant.

Nineteenth. This defendant, further answering, says that said complainant has not made or stated such a case by its said amended bill as entitles it to the relief prayed or any part thereof, and this defendant prays the same benefit of this defense as if it had demurrer to said amended bill for want of equity.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's amended bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM ZIEGLER.

HERRICK, ALLEN, BOYESEN & MARTIN,
Sol'rs for Defendant.

JOHN J. HERRICK, *Of Counsel.*

866 STATE OF ILLINOIS, } ss:
County of Cook, }

William Ziegler, being first duly sworn, on oath, says that he is the defendant named in the foregoing answer subscribed by him; that he has read said answer and knows the contents thereof, and that the same and the matters therein stated are true of his knowledge, except as to such matters as are therein stated to be upon information and belief, and as to those he believes them to be true.

WILLIAM ZIEGLER.

Subscribed and sworn to before me this 18th day of February, A. D. 1896.

ARTHUR W. HALE,
[SEAL.] *Notary Public.*

EXHIBIT "A."

1895, JUNE 1.

Wm. Ziegler, 47 Cedar St., city:

You are hereby notified that the Lake Street Elevated Railroad Company will pay any unpaid coupons of the Lake Street Elevated Railroad Co. due January 1, 1895, which you hold upon bonds of the Lake Street Ele. Railroad Company issued under the mortgage of April 7, 1893, on presentation to the American Trust & Savings Bank of Chicago, Ill.; said coupons to be paid and cancelled.

Will you likewise please notify any of your friends who hold any of these coupons that they will also be paid the same as yours?

Yours very truly, KNIGHT & BROWN,
Attorneys for Lake St. El. R. R.Co.

867 EXHIBIT "B."

1895, JULY 12.

The American Trust & Savings Bank of Chicago, Illinois, and the Farmers' Loan & Trust Company of the City of New York, co-trustee under the trust deed from the Lake Street Elevated Railroad Company of Chicago, Ill., dated April 7, 1893, and filed for record in the recorder's office of Cook Co., Ill., May 6, 1893, and recorded in Book 4256 of Records, at page 230, and also recorded in the office of the secretary of State of Ill., at Springfield, Ill., May 23rd, 1893, and given to secure certain first-mortgage gold bonds of the denomination of $1,000 each, as therein recited, and to said The Lake Street Elevated Railroad Company, maker of said trust deed and the bonds secured thereby and the interest coupons attached to said bonds, maturing respectively on the first day of January and July of each year unto the maturity of said bonds:

As owner of 392 of said bonds—numbers will be given (if required)—and the interest coupons attached thereto, I did on January 3, 1895, present for payment to the Farmers' Loan & Trust Company aforesaid, at its regular place of business in said New York

city, all the interest coupons attached to said bonds and each and every of them which matured and became due on, to wit, January 1, 1895, and payment was refused for want of funds wherewith to pay the same.

On July 1st, 1895, I again demanded payment of said coupons, as also the coupons attached to said bonds which matured July 1, 1895, at the office of said trust Co. in N. Y. city, and payment of said January and July, 1895, coupons was again refused for want of money to pay the same.

868 I am informed that the Lake Street Elevated Railroad Company has entered upon some plan to take up and cancel the bonds secured by said trust deed and in lieu and substitution thereof to issue to the holders thereof other so-called debenture bonds at the rate of only sixty per cent. (60%) of said original gold mortgage bonds secured by said trust deed, and said The Lake Street Elevated Railroad Company has given out that it has secured the consent of holders of over $6,000,000 par value of said mortgage bonds to surrender their original bonds and to accept in lieu and substitution sixty per cent. (60%) thereof in said new debenture bonds guaranteed or secured in some way by a corporation designated the Northwestern Elevated Railroad Company of Chicago, Ill.

Further, that the directors of said The Lake Street Elevated Railroad Company, in excess of their powers and in fraud of the rights of said original mortgage bondholders, have passed some resolution impairing or tending to impair the conditions of said trust deed and render it inoperative in some of its provisions, and that said directors have passed some resolution to the effect that the earnings of said The Lake Street Elevated Railroad Company should be used in paying interest on said new debenture bonds to the exclusion of paying interest on said original bonds, which is in fraud of the rights of the undersigned as owner of a part of said original bonds. I call your attention to the provisions of the trust deed or mortgage securing the bonds which I hold and own and which states specifically that the property rights, etc., of the Lake Street Elevated Railroad Company are held by the trustees under

869 said trust deed "for the equal *pro rata* use, benefit, and security of each and all and every the persons or corporations who may be or become holders of any of above-mentioned original mortgage bonds without any preference or priority of any one bond over another by reason of priority or otherwise."

I respectfully request, therefore, that the Lake Street Elevated Railroad Company inform me if any of the funds of said company have been, in violation of the trust agreement, used for the purpose of paying interest on the aforesaid debenture bonds.

I respectfully request the Farmers' Loan & Trust Company and the American Trust & Savings Bank, trustees, to examine the books of account of the Lake Street Elevated Railroad Company and ascertain what have been the net earnings of said railroad company for the past six months and what disposition has been made thereof, and if it be found there has been any unlawful use or division of said net earnings to the payment of interest on debenture bonds not

known to the trust deed I call upon said trustees to take such action as will nullify the wrong done and punish the wrong-doers.

WILLIAM ZIEGLER,
By J. M. COONAN,
Att'y, 46 Cedar St., N. Y. City.

EXHIBIT "C."

1895, JULY 18.

J. M. Coonan, 46 Cedar St.:

Your request in behalf of William Ziegler, Lawrence E. Ellis, and Oliver A. McMahon that we take certain action in regard to the Lake Street Elevated Railroad Company at hand and the same will have attention.

870 I wish to state, however, that we are now and have been since June 1st making unconditional payment of the coupons of the Lake Street Elevated R. R. due Jan. 1st, 1895, said coupons being now paid without requiring the signature of the bondholder to any agreement. If you wish to receive payment from these which you hold and you will send them to this office we have the funds to pay them at their face value.

Yours truly,

W. P. KOPF,
A. Sec'y A. T. & S. B.

EXHIBIT "D."

1895, JULY 24.

American Trust & Savings bank, trustee:

Your favor of July 18th duly received and noted.

On January 3 and again on July 1, 1895, I presented to the Farmers' Loan & Trust Co. the January 1 coupons from Mr. Ziegler's Lake Street Company's bonds and demanded payment thereof, which was both times refused.

Under date July 6, 1895, the First National Bank of Chicago returned to the Central national bank of this city Ellis and McMahon Lake Street coupons due January 1 and stated "Payment is refused."

The Farmers' Loan & Trust Company is cotrustee under the Lake Street Elevated Railroad Company's mortgage, and the coupons attached to bonds of said company secured by said mortgage specifically state that same are payable at the Farmers' Loan & Trust Co. or at your office, and the Farmers' Loan & Trust Co. is still cotrustee under said mortgage. In view of these facts, I believe that owners of unpaid and due Lake Street coupons are entitled to in-

871 terest at legal rate from date of presentation to and demand of either of said trustees to the date of payment on the face value of said due coupons. I would be pleased to have your decision on this point.

From your letter I conclude that you have funds in hand for payment of the July 1 interest on the Lake Street first-mortgage bonds that have not been deposited under the "Slaughter" sealing agreement, as I am informed that the income tolls, fares, etc., of the

Lake Street Elevated Railroad Company for the period ending June 30, 1895, have been used for the payment of interest duly July 1, 1895, on the so-called debenture bonds issued for 60 % of par value of and secured by the first-mortgage Lake Street Company's bonds deposited under said scaling agreement.

Will the Farmers' Loan & Trust Co. be provided with funds for payment of July 1 coupons, or must they also be sent to you?

Yours very truly, J. M. COONAN.

MEMO.—The A. T. & S. B. did not deny this in their reply following:

EXHIBIT "E."

1895, JULY 29.

J. M. Coonan:

Your favor of the 24th inst. at hand, and in reply to your inquiry will say that the funds in our possession to pay the coupons of the Lake St. El. R. R. Co., due Jan. 1, 1895, are just sufficient to pay the face amount of the outstanding coupons. For any claim of accrued interest we shall have to refer you to the railroad company.

872 In regard to the Ellis & McMahon coupons, due Jan. 1st, which you say were returned July 6th, marked "Payment refused," will say that it is our opinion the coupons were never presented at this office. We have found in other cases that the collection clerks in some of the banks of this city have presumed to return these coupons without presenting them, taking it for granted that there were no funds to pay them. If they are presented at this office they will be paid.

No provision has been made by the railroad company for the payment of interest due July 1st, 1895, on the first-mortgage bonds.

Yours truly, W. P. KOPF,
A. Sec'y A. T. & S. B.

EXHIBIT "F."

1895, SEPTEMBER 25, *1895.*

William Ziegler, Esq., 46 Cedar St.:

We beg to inform you that we have this day received from the American Trust & Savings Bank of Chicago, Ill., check for $9,800, with instructions to pay 392 Lake Street coupons, due January 1st, 1895, held by William Ziegler.

You will note that this is the face of the coupons only and no interest.

We have not as yet received any letter confirming the telegram, and, possibly, when we do we will be able to give you some further and more definite information as to interest.

Yours very truly,
THE FARMERS' LOAN & TRUST CO.
W. D. SEARLS.

873 EXHIBIT "G."

1895, OCTOBER 10.

William Ziegler, 46 Cedar St., N. Y.:

We have this day received from the American Trust & Savings bank a letter enclosing $381.13 to pay accrued interest up to and including the 10 inst. from January 1st last on the 392 coupons of the Lake Street Elevated Railroad Co. which you have left with us.

We herewith make formal tender to you of $9,800, principal of coupons, and $381.13, interest.

We enclose herewith copy of the letter received.

Yours very truly,

FARMERS' LOAN & TRUST CO.
W. S. SEARLS.

EXHIBIT "H."

1895, OCT. 8.

Farmers' Loan & Trust Co., 16 William St., city:

We herewith enclose our draft for $381.13 to pay accrued interest up to and including the 10 inst. from January 1st last on the three hundred and ninety-two coupons of the Lake Street Elevated Railroad Company, which have been presented to you by Mr. Ziegler. You will please cancel said coupons and return them to us.

If, for any reason, Mr. Ziegler refuses to accept this payment, will you kindly make a tender of the amount to him of principal and interest and demand delivery of the coupons?

Yours truly,

(Enc.) You already have the principal of these coupons.

(Signed) G. B. SHAW, *Pt.*

(Endorsed:) Filed Feb. 19, 1896. S. W. Burnham, clerk.

874 "*Answer of Wm. R. Peters.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Cotrustee, Defendants.

The separate answer of William R. Peters, one of the defendants herein, to the amended bill of complaint herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto,
875 or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation, as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust, a copy of which is attached to said amended bill, marked Exhibit 'C,' and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1894, and continuously ever since has been, and is now the holder and owner of ten (10) of said bonds, and that said bonds so held and owned by this defendant were long prior to the commencement of this suit and during the year 1894 purchased in the ordinary course of business by this defendant for a valuable consideration actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased as aforesaid by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same, and that he never at any time hitherto since this defendant's
876 purchase of said bonds as aforesaid has held said bonds, or any of them, or any interest in the same, or in any of the same, for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant purchased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deeds of trust that the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that the interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively, caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant, or to any one else to this defendant's knowledge, at any time prior to the commencement of this suit, that said bonds or coupons or any of them were invalid or subject to any defence or equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant
877 insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant; but this defendant further says that he is informed and believes, and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said allegations as it is advised or is able.

This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing, stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of

unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says as to those allegations in said amended bill of complaint contained, not hereinbefore answered, that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same; and this defendant prays that the complainant herein make such proof of the same as it is advised or is able; and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

878 WILLIAM R. PETERS,
By HERRICK, ALLEN, BOYESEN & MARTIN, *His Solicitors.*

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

879 "*Affidavit of W. R. Peters.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY *vs.* WILLIAM ZIEGLER ET AL. } In Equity.

STATE OF NEW YORK, *County of New York,* } *ss:*

William R. Peters, being first duly sworn, on oath says that he is the owner of ten first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds; that affiant purchased the said bonds on the market in the year 1894 for a valuable consideration actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business; that at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defense to said bonds or any of them, or of any fact or facts affecting or which could affect the validity of the same. Affiant does not hold and never held said bonds or any interest in the same for William Ziegler or any person whomsoever, but affiant owns and since his said purchase always has owned the same as an investment for his own sole benefit; that at the time affiant acquired said bonds, each of said bonds had upon its face a
880 certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., January 1, 1895, but that the interest coupons maturing July 1st, 1895, and January 1st, 1896, have not been paid nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment.

That since purchasing said bonds this affiant has received a notice inviting him as the holder of said bonds to join in what is called a 'scaling arrangement,' proposed by the Lake Street Elevated Railroad Company, and urging affiant to enter into said scaling arrangement, and that no claim or pretence was ever made to this affiant or to any one to his knowledge at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Ziegler and others (which affiant is informed was filed on December 31, 1895) that said bonds or coupons or any of them were invalid or subject to any defense or equity whatever, and that this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

W. R. PETERS.

Subscribed and sworn to before me this 8th day of February, 1896.

[Seal of Circuit Court U. S., 1855.]

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) Filed Feb. 17, 1896. S. W. Burnham, clerk.

881 "*Answer of Geo. Cleveland.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan and Trust Company, Cotrustee, Defendants.

The separate answer of George Cleveland, one of the defendants herein, to the amended bill of complaint herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto
882 or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation, as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust a copy of which is attached to said amended bill, marked Exhibit 'C,' and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1893 and continuously ever since has been and is now the holder and owner of twenty-one (21) of said bonds, and that said bonds so held and owned by this defendant were long prior to the commencement of this suit and during the year 1893 purchased in the ordinary course of business by this defendant for a valuable consideration actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased as aforesaid by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same, and that he never at any time hitherto since this defendant's
883 purchase of said bonds as aforesaid has held said bonds or any of them or any interest in the same or in any of the same, for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant purchased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deed of trust that the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that the interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant, at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively, caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant, or to any one else to this defendant's knowledge, at any time prior to the commencement of this suit, that said bonds or coupons or any of them were invalid or subject to any defence or equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant
884 insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant, but this defendant further says that he is informed and believes, and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said allegations as it is advised or is able.

This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults, and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of

unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says as to those allegations in said amended bill of complaint contained, not hereinbefore answered, that this defendant has no knowledge in regard to the same or any of same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able, and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

885 GEORGE CLEVELAND,
By HERRICK, ALLEN, BOYESEN & MARTIN, *His Solicitors.*

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

886 "UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs. } In Equity.
WILLIAM ZIEGLER ET AL. }

STATE OF NEW YORK, } ss:
County of New York, }

George Cleveland, being first duly sworn, on oath says that he is the owner of 21 first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds.

That affiant purchased the said bonds in the year 1893 for a valuable consideration actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business.

That at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defense to said bonds or any of them or of any fact or facts affecting or which could affect the validity of the same.

That affiant does not hold and never held said bonds or any interest in the same for William Zeigler or any person whomsoever, but affiant owns and since his said purchase always has
887 owned the same as an investment for his own sole benefit.

That at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., January 1, 1894; July 1, 1894, and January 1, 1895, but that the interest coupons maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment; that since purchasing said bonds this affiant has seen a notice inviting him, as the holder of said bonds, to join in what is called a 'scaling arrangement' proposed by the Lake Street Elevated Railroad Company, and that no claim or pretence was ever made to this affiant or to any one to his knowledge at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by The Lake Street Elevated Railroad Company against William Zeigler and others (which affiant is informed was filed on December 31, 1895), that said bonds or coupons or any of them were invalid or subject to any defense or equity whatever, and that this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

GEO. CLEVELAND.

888 Subscribed and sworn to before me this 8 day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

889 "*Answer of James Entwistle.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Cotrustee, Defendants.

The separate answer of James Entwistle, one of the defendants herein, sued herein as Edward Entwistle, to the amended bill of complaint herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation, as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust, a copy of which is attached to said amended bill, marked
890 Exhibit 'C,' and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was, in the year A. D. 1893, and continuously ever since has been and is now the holder and owner of five (5) of said bonds, and that said bonds so held and owned by this defendant were long prior to the commencement of this suit and during the year 1893 purchased in the ordinary course of business by this defendant for a valuable consideration, actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same, mentioned in the original and amended bills of complaint herein, or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased as aforesaid by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same, and that he never at any time hitherto since this defendant's purchase of said bonds as aforesaid has held said bonds or any of them or any interest in the same, or in any of the same, for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant purchased said bonds each of said bonds had upon its face a
891 certificate of the trustees in said mortgage or deed of trust that the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that the interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant, at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively, caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant or to any one else, to this defendant's knowledge, at any time prior to the commencement of this suit, that said bonds or coupons or any of them were invalid or subject to any defence in equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant; but this defendant further says that he is informed and believes, and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said allegations as it is advised or is able.

892 This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of

unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says, as to those allegations in said amended bill of complaint contained not hereinbefore answered, that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able, and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

JAMES ENTWISTLE (sued herein as Edward Entwistle),
By HERRICK, ALLEN, BOYESEN & MARTIN, *His Solicitors.*

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

893 "UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court of the United States, Northern District of Illinois Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY *vs.* WILLIAM ZEIGLER ET AL. } In Equity.

STATE OF NEW YORK, *County of New York,* } *ss:*

James Entwistle, being first duly sworn, on oath says that he is the owner of five first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds.

That affiant purchased the said bonds in the year 1893 for a valuable consideration actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business; that at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defence to said bonds or any of them or of any fact or facts affecting or which could affect the validity of the same; that affiant does not hold and never held said bonds or any interest in the same for William Zeigler or any person whomsoever, but affiant owns and since his said purchase always has owned the same as an investment for his own sole benefit.

894 That at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz: January 1, 1894; July 1, 1894, and January 1, 1895, but that the interest coupons maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment; that since purchasing said bonds this affiant has received a notice inviting him, as the holder of said bonds, to join in what is called a "scaling arrangement" proposed by the Lake Street Elevated Railroad Company, and urging affiant to enter into said scaling arrangement, and that no claim or pretence was ever made to this affiant or to any one to his knowledge at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Ziegler and others, which affiant is informed was filed on December 31, 1895; that said bonds or coupons or any of them were invalid or subject to any defense or equity whatever, and that this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

JAMES ENTWISTLE.

Subscribed and sworn to before me this 8th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

895 "UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Co-trustee, Defendants.

The Separate Answer of Oliver A. McMahon, One of the Defendants Herein, to the Amended Bill of Complaint Herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto, or
896 to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation, as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust, a copy of which is attached to said amended bill, marked Exhibit "C," and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1893, and continuously ever since has been and is now the holder and owner of five (5) of said bonds, and that said bonds so held and owned by this defendant were, long prior to the commencement of this suit and during the year 1893, purchased in the ordinary course of business by this defendant for a valuable consideration, actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein, or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased, as aforesaid, by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same,

and that he never at any time hitherto since this defend-
897 ant's purchase of said bonds, as aforesaid, has held said bonds or any of them or any interest in the same or in any of the same for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant purchased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deed of trust that the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that the interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid nor have any of them, although this defendant at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant or to any one else to this defendant's knowledge at any time prior to the commencement of this suit that said bonds or coupons or any of them were invalid or subject to any defence or equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant in-
sists that all the allegations in said original and amended
898 bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant; but this defendant further says that he is informed and believes, and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said allegations as it is advised or is able.

This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust and Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing, stating certain defaults in the payment of interest on said bonds, and certain other material facts in regard to said defaults, and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of unlawful combination, conspiracy, and confederacy wherewith this this defendant is by the said amended bill charged.

This defendant, further answering, says as to those allegations in said amended bill of complaint contained not hereinbefore answered that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able, and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

899 OLIVER A. McMAHON,
By HERRICK, ALLEN, BOYESEN & MARTIN, *His Solicitors.*

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) " Filed Feb. 17, 1896. S. W. Burnham, clerk."

900 "UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY *vs.* WILLIAM ZIEGLER ET AL. } In Equity.

STATE OF NEW YORK, *County of New York,* } *ss:*

Oliver A. McMahon, being first duly sworn, on oath says that he is the owner of five first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds; that affiant purchased the said bonds in the year 1893 for a valuable consideration, actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business; that at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defence to said bonds or any of them or of any fact or facts affecting or which could affect the validity of the same; that affiant does not hold said bonds or any interest in the same for William Ziegler or any person whomsoever, but affiant owns and since his said purchase always has owned the same as an investment for his own sole benefit; that at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of
901 the trust deed. Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., January 1, 1894; July 1, 1894, and January 1, 1895, but that the interest coupons bearing

date July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payments; that since purchasing said bonds this affiant has received a notice inviting him, as the holder of said bonds, to join in what is called a "scaling arrangement" proposed by the Lake Street Elevated Railroad Company, and urging affiant to enter into said scaling arrangement, and that no claim or pretence was ever made to this affiant or to any one to his knowledge at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Ziegler and others (which affiant is informed was filed on December 31, 1895); that said bonds or coupons or any of them were invalid or subject to any defense or equity whatsoever, and this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

OLIVER A. McMAHON.

Subscribed and sworn to before me this 8th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

902 "*Answer of Lawrence E. Ellis.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Cotrustee, Defendants.

The separate answer of Lawrence E. Ellis, one of the defendants herein, to the amended bill of complaint herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation, as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust a copy of which is attached to said amended bill, marked
903 Exhibit 'C,' and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1893 and continuously ever since has been and is now the holder and owner of four (4) of said bonds, and that said bonds so held and owned by this defendant were long prior to the commencement of this suit and during the year 1893 purchased in the ordinary course of business by this defendant for a valuable consideration, actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased, as aforesaid, by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of them same, and that he never at any time hitherto since this defendant's purchase of said bonds, as aforesaid, has held said bonds or any of them or any interest in the same or in any of the same for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant pur-
904 chased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deed of trust that the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant or to any one else, to this defendant's knowledge, at any time prior to the commencement of this suit, that said bonds or coupons or any of them were invalid

or subject to any defence or equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit. This defendant, further answering, says that this defendant insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant; but this defendant further says that he is informed and believes and on such information and belief states the fact to be that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said
905 allegations as it is advised or is able.

This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing, stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults, and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says as to those allegations in said amended bill of complaint contained not hereinbefore answered that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able, and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

LAWRENCE E. ELLIS,
By HERRICK, ALLEN, BOYESEN & MARTIN, *His Solicitors.*

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

906 "UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY } In Equity.
vs.
WILLIAM ZIEGLER ET AL.

STATE OF NEW YORK, } ss:
County of New York, }

Lawrence E. Ellis, being first duly sworn, on oath says that he is the owner of four first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds; that affiant purchased the said bonds in the year 1893 for a valuable consideration actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business; that at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defense to said bonds or any of them or of any fact or facts affecting or which could affect the validity of the same; that affiant does not hold said bonds or any interest in the same for William Ziegler or any person whomsoever, but affiant owns and since his said purchase always has owned the same as an investment for his own sole benefit; that at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

907 Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., January 1, 1894, July 1, 1894, and January 1, 1895, but that the interest coupons bearing date July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment.

That since purchasing said bonds this affiant has received a notice inviting him, as the holder of said bonds, to join in what is called a 'scaling arrangement' proposed by the Lake Street Elevated Railroad Company, and urging affiant to enter into said scaling arrangement, and that no claim or pretence was ever made to this affiant or to any one to his knowledge at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Ziegler and others (which affiant is informed was filed on December 31, 1895), that said bonds or coupons or any of them were invalid

or subject to any defence or equity whatsoever, and this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

LAWRENCE E. ELLIS.

Subscribed and sworn to before me this 8th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

908 "*Answer of James B. Ryan.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Cotrustee, Defendants.

The separate answer of James B. Ryan, one of the defendants herein, to the amended bill of complaint herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust, a copy of which is attached to said amended bill, marked
909 Exhibit 'C,' and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1893 and continuously ever since has been and is now the holder and owner of twelve (12) of said bonds, and that said bonds so held and owned by this defendant were, long prior to the commencement of this suit and during the year 1893, purchased in the

ordinary course of business by this defendant for a valuable consideration actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein, or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased as aforesaid by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same, and that he never at any time hitherto since this defendant's purchase of said bonds as aforesaid has held said bonds or any of them or any interest in the same or in any of the same for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant purchased said bonds each of said bonds had upon its face
910 a certificate of the trustees in said mortgage or deed of trust that the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively, caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant or to any one else, to this defendant's knowledge, at any time prior to the commencement of this suit, that said bonds or coupons or any of them were invalid or subject to any defence or equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant, but this defendant further says that he is informed and believes and on such information and belief states the fact to be that said allegations are untrue in fact, and this defendant

prays that the complainant make such proof of said alle-
911 gations as it is advised or is able.

This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing, stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says as to those allegations in said amended bill of complaint contained not hereinbefore answered that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able, and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

JAMES B. RYAN,
By HERRICK, ALLEN, BOYESEN & MARTIN, *His Solicitors.*

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

912 "UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs. } In Equity.
WILLIAM ZIEGLER ET AL. }

STATE OF NEW YORK, } ss:
County of New York, }

James B. Ryan, being first duly sworn, on oath says that he is the owner of 12 first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds; that affiant purchased the said bonds in the year 1893 for a valuable consideration actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary

course of business; that at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defense to said bonds or any of them — of any fact or facts affecting or which could affect the validity of the same; that affiant does not hold said bonds or any interest in the same for William Ziegler or any persons whomsoever, but affiant owns and since his said purchase always has owned the same as an investment for his own sole benefit.

913 That at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., January 1, 1894, July 1, 1894, and January 1, 1895, but that the interest coupons bearing date July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment.

That since purchasing said bonds this affiant has received a notice inviting him as the holder of said bonds to join in what is called a "scaling agreement" proposed by the Lake Street Elevated Railroad Company and urging affiant to enter into said scaling agreement, and that no claim or pretence was ever made to this affiant or to any one to his knowledge at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Zeigler and others (which affiant is informed was filed on December 31, 1895) that said bonds or coupons or any of them were invalid or subject to any defense or equity whatsoever, and this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

914 JAMES B. RYAN.

Subscribed and sworn to before me thie 17th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) "Filed Feb. 20, 1896. S. W. Burnham, clerk."

915 "*Answer of Lizzie W. Wright.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan and Trust Company, Co-trustee, Defendants.

The separate answer of Lizzie Wentworth Wright, one of the defendants herein, to the amended bill of complaint herein.

This defendant, saving to *him*self all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for *him* to make answer to, answering, says:

This defendant admits that the complainant is a corporation, as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust a copy of which is attached to said amended bill,
916 marked Exhibit "C," and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that *he* was in the year A. D. 1894 and continuously ever since has been and is now the holder and owner of five (5) of said bonds, and that said bonds so held and owned by this defendant were long prior to the commencement of this suit and during the year 1894 purchased in the ordinary course of business by this defendant for a valuable consideration, actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased as aforesaid by this defendant, and this defendant insists that *he* is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that *he* does not now hold said bonds or any of them or any interest in any of the same, and that he never at any time hitherto since this defendant's purchase of said bonds, as aforesaid, has held said bonds or any of them or any interest in the same or in any of the same for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant purchased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deed of trust that the
917 same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time *he* purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that the interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant, at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant, or to any one else to this defendant's knowledge, at any time prior to the commencement of this suit that said bonds or coupons or any of them were invalid or subject to any defence in equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant, but this defendant further says that he is informed and believes, and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said allegations as it is advised or is able.

918 This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of

unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says as to those allegations in said amended bill of complaint contained not hereinbefore answered that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able, and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

LIZZIE WENTWORTH WRIGHT,
By HERRICK, ALLEN, BOYESEN & MARTIN,
Her Solicitors.

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

919 "UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs. } In Equity.
WILLIAM ZIEGLER ET AL. }

STATE OF NEW YORK, } ss:
County of New York. }

Alfred K. Wright, being first duly sworn, on oath says that he is the husband of and attorney for Lizzie Wentworth Wright, the owner of five first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds; that affiant purchased the said bonds in the open market in the year 1894, for a valuable consideration, actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business.

That at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defense to said bonds or any of them, or of any fact or facts affecting or which could affect the validity of the same.

That affiant does not hold said bonds or any interest in the same for William Ziegler or any person whomsoever, but affiant
920 owns, and since his said purchase always has owned, the same as an investment for his sole benefit.

That at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

Affiant further says that at the time he purchased said bonds

interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., July 1, 1894, and January 1, 1895, but that the interest coupons bearing date July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payments.

That since purchasing said bonds this affiant has received a notice inviting him as the holder of said bonds to join in what is called a "scaling arrangement" proposed by the Lake Street Elevated Railroad Company, and urging affiant to enter into said scaling arrangement, and that no claim or pretence was ever made to this affiant, or to any one, to his knowledge, at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Ziegler and others (which affiant is informed was filed on December 31, 1895) that said bonds or coupons or any of them were invalid or subject to any defense or equity whatsoever, and
921 this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

ALFRED K. WRIGHT,
Att'y for Lizzie Wentworth Wright.

Subscribed and sworn to before me this 8th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

922 "*Answer of Effingham H. Nichols.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Cotrustee, Defendants.

The separate answer of Effingham H. Nichols, one of the defendants herein, to the amended bill of complaint herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation, as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust a copy of which is attached to said amended bill, marked
923 Exhibit "C," and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1893 and continuously ever since has been and is now the holder and owner of fifty (50) of said bonds, and that said bonds so held and owned by this defendant were long prior to the commencement of this suit and during the year 1893 purchased in the ordinary course of business by this defendant for a valuable consideration, actually paid by this defendant at the time of said purchase, and in like manner he subsequently purchased in the open market five (5) more of said bonds, which he still owns, and that at the times of said purchases and of said payments of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased, as aforesaid, by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and

equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same, and that he never at any time hitherto since this defendant's purchase of said bonds, as aforesaid, has held said bonds or any of them or any interest in the same or in any of the same for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defend-
924 ant purchased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deed of trust that the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid nor have any of them, although this defendant at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant or to any one else, to this defendant's knowledge, at any time prior to the commencement of this suit that said bonds or coupons or any of them were invalid or subject to any defence or equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant, but this defendant further says that he is informed and believes, and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said allegations
925 as it is advised or is able.

This defendant further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mort-

gage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says as to those allegations in said amended bill of complaint contained not hereinbefore answered that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same; and this defendant prays that the complainant herein make such proof of the same as it is advised or is able; and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

EFFINGHAM H. NICHOLS,
By HERRICK, ALLEN, BOYESEN & MARTIN,
His Solicitors.

JOHN J. HERRICK, *Of Counsel.*"

[Seal Circuit Court of U. S., 1855.]

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

926 "UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs. } In Equity.
WILLIAM ZEIGLER ET AL. }

STATE OF NEW YORK, } ss:
County of New York, }

Effingham H. Nichols, being first duly sworn, on oath says that he is the owner of 55 first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds.

That affiant purchased 50 of the said bonds in the year 1893 and five on open market later, for a valuable consideration actually paid by him at the time of such purchases.

That said purchase was made in good faith and in the ordinary course of business.

That at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defense to said bonds or any of them or of any fact or facts affecting or which could affect the validity of the same.

That affiant does not hold and never held said bonds or any

interest in the same for William Zeigler or any person
927 whomsoever; but affiant owns and since his said purchase always has owned the same as an investment for his own sole benefit; that at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

Affiant further says that at the time he purchased said bonds interest has been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., January 1, 1894, July 1, 1894, and July 1, 1895, but that the interest coupons maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment.

That since purchasing said bonds this affiant has received a notice inviting him as the holder of said bonds to join in what is called a 'scaling arrangement' proposed by the Lake Street Elevated Railroad Company, and urging affiant to enter into said scaling arrangement, and that no claim or pretence was ever made to this affiant or to any one to his knowledge at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Zeigler and others (which affiant is informed was filed on December 31, 1895), that said bonds or coupons or any of them were invalid or subject to any defense or equity whatever, and that this affiant never had any knowledge or notice of any such claim or
928 pretense at any time prior to the filing of said bill.

EFF'M H. NICHOLS.

Subscribed and sworn to before me this 8th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) " Filed Feb. 17, 1896. S. W. Burnham, clerk."

929 "*Answer of James V. S. Woolley.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Cotrustee, Defendants.

The separate answer of James V. S. Woolley, one of the defendants herein, to the amended bill of complaint herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust, a copy of which is attached to said amended bill, marked
930 Exhibit 'C,' and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1893, and continuously ever since has been and is now, the holder and owner of ten (10) of said bonds, and that said bonds so held and owned by this defendant were, long prior to the commencement of this suit and during the year 1893, purchased in the ordinary course of business by this defendant for a valuable consideration, actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein, or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased as aforesaid by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same, and that he never at any time hitherto since this defendant's purchase of said bonds as aforesaid has held said bonds or any of them or any interest in the same or in any of the same for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defend-
931 ant purchased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deed of trust that the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant, at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively, caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretense had ever been made to this defendant or to any one else, to this defendant's knowledge, at any time prior to the commencement of this suit, that said bonds or coupons or any of them were invalid or subject to any defence or equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant, but this defendant further says that he is informed and believes and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant
932 prays that the complainant make such proof of said allegations as it is advised or is able.

This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing, stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults, and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says, as to those allegations in said amended bill of complaint contained not hereinbefore answered, that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able; and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

JAMES V. S. WOOLLEY,
By HERRICK, ALLEN, BOYESEN & MARTIN,
His Solicitors.

JOHN J. HERRICK, *Of Counsel.*"

[Seal of Circuit Court of U. S., 1855.]

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

933 "UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs. } In Equity.
WILLIAM ZIEGLER ET AL. }

STATE OF NEW YORK, } *ss:*
County of New York, }

James V. S. Woolley, being first duly sworn, on oath says that he is the owner of ten first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds; that affiant purchased the said bonds in the year 1893 for a valuable consideration actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business; that at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defense to said bonds or any of them or of any fact or facts affecting or which could affect the validity of the same; that affiant does not hold said bonds or any interest in the same for William Ziegler or any person whomsoever, but affiant owns and since his said purchase always has owned the same as an investment for his own sole benefit; that at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

934 Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the follow-

ing dates have been paid, viz., January 1, 1894; July 1, 1894, and January 1, 1895, but that the interest coupons bearing date July 1st, 1895, and January 1st, 1896, have not been paid nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment.

That since purchasing said bonds this affiant has received a notice inviting him as the holder of said bonds to join in what is called a 'scaling arrangement' proposed by the Lake Street Elevated Railroad Company and urging affiant to enter into said scaling arrangement, and that no claim or pretence was ever made to this affiant or to any one, to his knowledge, at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Ziegler and others (which affiant is informed was filed on December 31, 1895), that said bonds or coupons or any of them were invalid or subject to any defence or equity whatsoever, and this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

JAMES V. S. WOOLLEY.

Subscribed and sworn to before me this 8th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

935 "*Answer of Jere Johnson, Jr.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Cotrustee, Defendants.

The separate answer of Jere Johnson, Jr., one of the defendants herein, to the amended bill of complaint herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to

the said amended bill of complaint, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation, as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust, a copy of which is attached to said amended bill, marked
936 Exhibit 'C,' and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1893 and continuously ever since has been and is now the holder and owner of ten (10) of said bonds, and that said bonds so held and owned by this defendant were, long prior to the commencement of this suit and during the year 1893, purchased in the ordinary course of business by this defendant for a valuable consideration, actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein, or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased as aforesaid by this defendant; and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same, and that he never at any time hitherto since this defendant's purchase of said bonds, as aforesaid, has held said bonds or any of them or any interest in the same or in any of the same for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant purchased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deed of trust that the
937 same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that the interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant, at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively, caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence

had ever been made to this defendant or to any one else, to this defendant's knowledge, at any time prior to the commencement of this suit, that said bonds or coupons or any of them were invalid or subject to any defence in equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant, but this defendant further says that he is informed and believes, and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said allegations as it is advised or is able.

938 This defendant, further answering, says that, prior to the commencement of this suit, this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says, as to those allegations in said amended bill of complaint contained not hereinbefore answered, that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able; and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

JERE JOHNSON, JR.,
By HERRICK, ALLEN, BOYESEN & MARTIN, *His Solicitors.*

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

939 "UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs. } In Equity.
WILLIAM ZIEGLER ET AL. }

STATE OF NEW YORK, } ss:
County of New York, }

Jere Johnson, Jr., being first duly sworn, on oath says that he is the owner of 10 first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds; that affiant purchased the said bonds in the year 1893 for a valuable consideration actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business; that at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defense to said bonds or any of them or of any fact or facts affecting or which could affect the validity of the same; that affiant does not hold said bonds or any interest in the same for William Ziegler or any person whomsoever, but affiant owns and since his said purchase always has owned the same as an investment for his own sole benefit; that at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

940 Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., January 1, 1894, July 1, 1894, and January 1, 1895, but that the interest coupons bearing date July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment.

That since purchasing said bonds this affiant has received a notice inviting him, as the holder of said bonds, to join in what is called a 'scaling arrangement' proposed by the Lake Street Elevated Railroad Company, and urging affiant to enter into said scaling arrangement, and that no claim or pretence was ever made to this affiant or to any one to his knowledge at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Ziegler and others (which affiant is informed was filed on December 31, 1895), that said bonds or coupons or any of them were invalid

or subject to any defence or equity whatsoever, and this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

JERE JOHNSON, JR.

Subscribed and sworn to before me this 8th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

941 "*Answer of Wm. M. Van Anden.*

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EFFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Cotrustee, Defendants.

The separate answer of William M. Van Anden, one of the defendants herein, to the amended bill of complaint herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation, as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust, a copy of which is attached to said amended bill, marked
942 Exhibit 'C,' and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1893 and continuously ever since has been and is now the holder and owner of fifty (50) of said bonds, and that said bonds so held and owned by this defendant were, long prior to the commencement of this suit and during the year 1893, purchased in the ordinary course of business by this defendant for a valuable consideration actually paid by this defendant at the time of said purchase,

and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein or of any other defence or equity that in anywise affected the validity or enforceability of said bonds or any of them so purchased, as aforesaid, by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same, and that he never at any time hitherto since this defendant's purchase of said bonds, as aforesaid, has held said bonds or any of them or any interest in the same or in any of the same for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant purchased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deed of trust that
943 the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that the interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant, at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively, caused said coupons to be duly presented for payment and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant or to any one else, to this defendant's knowledge, at any time prior to the commencement of this suit, that said bonds or coupons or any of them were invalid or subject to any defence in equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant, but this defendant further says that he is informed and believes, and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said allegations as it is advised or is able.

944 This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults, and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says as to those allegations in said amended bill of complaint contained not hereinbefore answered that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able, and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WILLIAM M. VAN ANDEN,
By HERRICK, ALLEN, BOYESEN & MARTIN, *His Solicitors.*

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

945 "UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs. } In Equity.
WILLIAM ZIEGLER ET AL. }

STATE OF NEW YORK, } ss:
County of New York, }

William M. Van Anden, being first duly sworn, on oath says that he is the owner of 50 first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds; that affiant purchased the said bonds in the year 1893 for a valuable consideration actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business; that at the time affiant purchased said bonds he had no knowledge of notice of any claim or pretense

of any defense to said bonds or any of them or of any fact or facts affecting or which could affect the validity of the same; that affiant does not hold and never held said bonds or any interest in the same for William Zeigler or any person whomsoever, but affiant owns and since his said purchase always has owned the same as an investment for his sole benefit; that at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the pro-
946 visions of the trust deed. Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., January 1, 1894, July 1, 1894, and January 1, 1895, but that the interest coupons maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment; that since purchasing said bonds this affiant has received a notice inviting him as the holder of said bonds to join in what is called a 'scaling arrangement,' proposed by the Lake Street Elevated Railroad Company, and urging affiant to enter into said scaling arrangement, and that no claim or pretense was ever made to this affiant or to any one to his knowledge at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Zeigler and others (which affiant is informed was filed on December 31, 1895), that said bonds or coupons or any of them were invalid or subject to any defense or equity whatever, and that this affiant never had any knowledge or notice of any such claim or pretense at any time prior to the filing of said bill.

WM. M. VAN ANDEN.

Subscribed and sworn to before me this 10th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

947 "UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois.

In the Circuit Court of the United States for said Northern Division of the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
WILLIAM ZIEGLER, GEORGE CLEVELAND, EEFINGHAM H. NICHOLS, William M. Van Anden, Charles Smith, James B. Ryan, William R. Peters, Jere Johnson, Jr., James V. S. Woolley, Oliver A. McMahon, Edward Entwistle, Lawrence E. Ellis, Lizzie Wentworth Wright, The American Trust and Savings Bank, Trustee, and The Farmers' Loan & Trust Company, Cotrustee, Defendants.

The Separate Answer of Charles Smith, One of the Defendants Herein, to the Amended Bill of Complaint Herein.

This defendant, saving to himself all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the said amended bill of complaint, for answer
948 thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

This defendant admits that the complainant is a corporation as alleged in said amended bill of complaint, and says that said complainant duly executed and delivered the mortgage or deed of trust, a copy of which is attached to said amended bill, marked Exhibit 'C,' and also duly executed and delivered the bonds and coupons mentioned in said mortgage or deed of trust.

This defendant, further answering, says that he was in the year A. D. 1893 and continuously ever since has been and is now the holder and owner of fifteen (15) of said bonds, and that said bonds so held and owned by this defendant were, long prior to the commencement of this suit and during the year 1893, purchased in the ordinary course of business by this defendant for a valuable consideration actually paid by this defendant at the time of said purchase, and that at the time of said purchase and of said payment of said valuable consideration this defendant had no knowledge or notice whatsoever of the alleged defences to and equities concerning the same mentioned in the original and amended bills of complaint herein, or of any other defence or equity that in anywise affected the validity of enforceability of said bonds or any of them so purchased, as aforesaid, by this defendant, and this defendant insists that he is a *bona fide* purchaser of said bonds for a good and valuable consideration and without any notice whatsoever of the alleged defences to and equities concerning the same set up in the original and amended bills of complaint herein.

And this defendant, further answering, says that he does not now hold said bonds or any of them or any interest in any of the same,

and that he never at any time hitherto since this defendant's
949 purchase of said bonds, as aforesaid, has held said bonds or any of them or any interest in the same or in any of the same for William Ziegler or any other person whatsoever, but has always held and now holds said bonds and all of the same as an investment for this defendant's own sole benefit, and that at the time this defendant purchased said bonds each of said bonds had upon its face a certificate of the trustees in said mortgage or deed of trust that the same was duly issued and delivered pursuant to the provisions of said mortgage or deed of trust.

This defendant, further answering, says that at the time he purchased said bonds the interest had been paid thereon from the time of their issue to the time of their purchase by this defendant, and that since this defendant purchased said bonds the interest coupons thereon maturing prior to the 1st day of January, 1895, have been paid, but that the interest coupons thereon maturing July 1st, 1895, and January 1st, 1896, have not been paid, nor have any of them, although this defendant at or about said 1st day of July, 1895, and said 1st day of January, 1896, respectively, caused said coupons to be duly presented for payment, and demand to be made for such payment.

This defendant, further answering, says that no claim or pretence had ever been made to this defendant, or to any one else to this defendant's knowledge, at any time prior to the commencement of this suit, that said bonds or coupons or any of them were invalid or subject to any defence or equity whatsoever, and that this defendant never had any knowledge or notice whatsoever of any such claim or pretence at any time prior to the commencement of this suit.

This defendant, further answering, says that this defendant
950 insists that all the allegations in said original and amended bills of complaint setting up pretended defences to and equities concerning said bonds are immaterial and unnecessary to be answered by this defendant; but this defendant further says that he is informed and believes, and on such information and belief states the fact to be, that said allegations are untrue in fact, and this defendant prays that the complainant make such proof of said allegations as it is advised or is able.

This defendant, further answering, says that prior to the commencement of this suit this defendant served upon the American Trust & Savings bank, trustee, and the Farmers' Loan and Trust Company, cotrustee, a certain notice in writing stating certain defaults in the payment of interest on the said bonds and certain other material facts in regard to said defaults, and making certain demands on said trustees, including demands that said trustees take possession of said mortgaged property, and also foreclose said mortgage or deed of trust, and also take other proper steps for the enforcement of said mortgage or deed of trust.

This defendant, further answering, denies all and all manner of unlawful combination, conspiracy, and confederacy wherewith this defendant is by the said amended bill charged.

This defendant, further answering, says, as to those allegations

in said amended bill of complaint contained not hereinbefore answered, that this defendant has no knowledge in regard to the same or any of the same, and therefore can neither admit nor deny the same, and this defendant prays that the complainant herein make such proof of the same as it is advised or is able; and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

951 CHARLES SMITH,
By HERRICK, ALLEN, BOYESEN & MARTIN,
His Solicitors.

JOHN J. HERRICK, *Of Counsel.*"

(Endorsed:) " Filed Feb. 17, 1896. S. W. Burnham, clerk."

952 "UNITED STATES OF AMERICA, } ss.:
Northern District of Illinois, }

Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE LAKE STREET ELEVATED RAILROAD COMPANY }
vs. } In Equity.
WILLIAM ZIEGLER ET AL. }

STATE OF NEW YORK, } ss.:
County of New York, }

Charles Smith, being first duly sworn, on oath says that he is the owner of 15 first-mortgage bonds of the Lake Street Elevated Railroad Company, bearing date the 7th day of April, 1893, and payable on the 1st day of July, 1928, each for the sum of one thousand dollars ($1,000), together with the coupons attached to said bonds; that affiant purchased the said bonds in the year 1893 for a valuable consideration actually paid by him at the time of such purchase; that said purchase was made in good faith and in the ordinary course of business; that at the time affiant purchased said bonds he had no knowledge or notice of any claim or pretence of any defense to said bonds or any of them or of any fact or facts affecting or which could affect the validity of the same; that affiant does not hold and never held said bonds or any interest in the same for William Ziegler or any person whomsoever, but affiant owns and since his said purchase always has owned the same as an investment for his own sole benefit; that at the time affiant acquired said bonds each of said bonds had upon its face a certificate of the trustees that it was duly issued and delivered pursuant to the provisions of the trust deed.

953 Affiant further says that at the time he purchased said bonds interest had been paid thereon from the time of their issue to the time of said purchase by affiant, and that since affiant purchased said bonds the interest coupons maturing on the following dates have been paid, viz., January 1, 1894; July 1, 1894, and January 1, 1895, but that the interest coupons maturing July 1st,

1895, and January 1st, 1896, have not been paid, nor have any of them, although affiant at or about said July 1st, 1895, and January 1st, 1896, duly caused said coupons to be presented for payment and demand to be made for such payment.

That since purchasing said bonds this affiant has received a notice inviting him as the holder of said bonds to join in what is called a 'scaling arrangement,' proposed by the Lake Street Elevated Railroad Company, and urging affiant to enter into said scaling arrangement, and that no claim or pretence was ever made to this affiant or to any one, to his knowledge, at any time prior to the filing of the bill of complaint in the circuit court of Cook county, Illinois, by the Lake Street Elevated Railroad Company against William Ziegler and others (which affiant is informed was filed on December 31, 1895), that said bonds or coupons or any of them were invalid or subject to any defence or equity whatever, and this affiant never had any knowledge or notice of any such claim or pretence at any time prior to the filing of said bill.

CHARLES SMITH.

Subscribed and sworn to before me this 8th day of February, 1896.

JOHN M. COONAN,
Notary Public, Notary Public, Kings County.

Certificate filed in New York county."

(Endorsed:) "Filed Feb. 17, 1896. S. W. Burnham, clerk."

954 Mr. BURRY: I offer in evidence a certified copy from the United States circuit court for the northern district of Illinois of the proceedings therein taken in this case, as follows:

An order entered in said United States court on February 4th, 1896, ordering that the defendant The Farmers' Loan & Trust Company have leave to file transcript from the superior court and docket the cause.

The bond for costs filed in said cause in said United States court on February 4, 1896.

The motion filed in said United States court and cause on February 5th, 1896, by The Northern Trust Company, defendant, to remand the cause to the superior court of Cook county, Illinois.

The motion of the American Trust & Savings bank filed in said United States court and cause on February 17th, 1896, to remand the cause to the superior court of Cook county, Illinois, and strike the transcript from the files of said United States court and additional transcript filed with said motion.

The motion of The Lake Street Elevated Railroad Company, complainant, filed in said cause in said United States court on February 18, 1896, to remand the cause to the superior court of Cook county, Illinois.

955 The affidavit of D. H. Louderback and Exhibit "A," attached thereto, filed in said cause in said United States court on said February 18th, 1896.

An order entered in said cause in said United States court on said February 18, 1896, granting said American Trust & Savings bank leave to file additional record from superior court of Cook county, Illinois, and showing continuation of arguments on said above-mentioned motions to remand, and also certain orders entered in said cause in said United States court on February 19 and 20, 1896, showing further continuations of said last-mentioned motions, and the taking of those motions under advisement.

The affidavit of John H. Miller filed in said cause in said United States court on February 20, 1896.

An order entered in said cause in said United States court on March 16, 1896, reciting said motions to remand and said motion to strike the cause from the docket and overruling same and modifying the injunction in the case so as to allow solicitors of the Farmers' Loan & Trust Company to present and argue the demurrers in the cause of Farmers' Loan & Trust Company against the Lake Street Elevated Railroad Company *et al.*, pending in said United States court, and to file an amended bill in said last-mentioned cause.

The order of said United States court and cause entered therein the 17th of March, 1896, showing the setting for hearing in that court of the application to dissolve the injunction. (Said certified copy showing said proceedings in said cause in said United States court so offered in evidence by counsel for said Farmers' Loan & Trust Company, defendant, was thereupon read in evidence, and said certified copy was in the words and figures following, to wit:)

956 "LAKE STREET ELEVATED RAILROAD COMPANY *vs.* FARMERS' LOAN AND TRUST COMPANY ET AL. } 24003. In Chancery.

Be it remembered that on this day, to wit, the fourth day of February, in the year of our Lord one thousand eight hundred and ninety-six, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

LAKE STREET ELEVATED RAILROAD COMPANY *vs.* FARMERS' LOAN AND TRUST COMPANY ET AL. } 24003. In Chancery.

Now comes the Farmers' Loan and Trust Company, by William Burry, its solicitor, and prays leave of court to file transcript from the superior court of Cook county. It is ordered by the court that said defendant have leave to file said transcript and docket cause."

957 "On the same day, to wit, the fourth day of February, 1896, there was filed in the clerk's office of said court a transcript of record from the superior court of Cook county, certified to by the clerk thereof under date of February 4, A. D. 1896."

958 "On the same day, to wit, the fourth day of February, 1896, there was filed in the clerk's office of said court a bond for costs; which said bond for costs is in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss.:*

LAKE STREET ELEVATED RAILROAD CO.
vs.
FARMERS' LOAN & TRUST CO. ET AL. } In Chancery.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the petitioner of any costs ordered or adjudged to be paid by it I hereby agree and stipulate that execution may issue against my property for all costs not exceeding two hundred dollars taxed against it.

Dated this 4th day of February, A. D. 1896.

WM. BURRY."

(Endorsed:) "Filed Feb. 4, 1896. S. W. Burnham, clerk."

959 Afterwards, to wit, on the fifth day of February, 1896, came the defendant The Northern Trust Company, by its solicitors, and filed in the clerk's office of said court its motion to remand said cause; which said motion is in the words and figures following, to wit:

Motion.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss.:*

In the Circuit Court of the United States.

THE LAKE STREET ELEVATED RAILROAD Company, Complainant,
vs.
THE FARMERS' LOAN AND TRUST COMPANY, The American Trust and Savings Bank, and The Northern Trust Company of Chicago, Defendants. } Removal from the Superior Court of Cook County. In Chancery.

And now comes the said defendant, The Northern Trust Company of Chicago, by its solicitors, and moves this honorable court to remand the above cause to the superior court of Cook county, State of Illinois, from which said court, by an order thereof, the said cause was recently removed to this honorable court and is now pending herein, and which said motion is based on the grounds:

960 First. That this court is without jurisdiction to hear and determine the cause, and for the reason that there is not in this suit any controversy which is wholly between citizens of different States and which can be fully determined as between them.

Second. That upon the petition for removal of this cause to this court filed in said superior court, and upon the face of the pleadings in this cause as they stood when said petition was filed, said superior court found, determined, and adjudged that there was not in this suit any controversy which is wholly between citizens of different States and which can be fully determined as between them.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for the Northern Trust Company.

DUPEE, JUDAH, WILLARD & WOLF,
Of Counsel.

(Endorsed:) Filed Feb. 5, 1896. S. W. Burnham, clerk.

961 Afterwards, to wit, on the seventeenth day of February, 1896, came the American Trust and Savings Bank, by its solicitors, and filed in the clerk's office of said court a motion to remand said cause; which said motion is in the words and figures following, to wit:

Motion of American Trust & Savings Bank.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division Thereof, } ss:

In the Circuit Court of the United States in and for said Division.

LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
FARMERS' LOAN & TRUST COMPANY, AMERICAN TRUST & SAVINGS BANK, and Northern Trust Company, Defendants.

Now comes The American Trust & Savings Bank, one of said defendants, and respectfully moves the court as follows:

1st. That the order heretofore entered herein on February 4, 1896, permitting a certain transcript of record from the superior court of Cook county, Illinois, to be filed herein, be set aside and vacated.

2nd. That the above-entitled cause be remanded to the State court. This motion is based upon the following reasons:

(*a.*) That the transcript of the record filed herein shows that a motion was filed in said superior court to remove said cause
962 into this court; that said motion was filed on February 1st, 1896; that said motion was heard and determined by said superior court and the petition to remove said cause overruled and disallowed; that said order of disallowance of said State court was entered after the hearing of the full arguments on behalf of said The Farmers' Loan & Trust Company in support of the petition for removal and the argument of certain of the defendants opposing

said petition for removal; that the judgment of said State court disallowing said petition for removal was based upon two grounds: (1) That the bond filed with the petition for removal and contained in the transcript herein was insufficient; (2) that the cause embraced in the bill filed in said superior court and contained in the transcript herein does not present a controversy which is severable or a controversy in which all the parties on one side are citizens of one State and all of the necessary parties on the other side are citizens of another State; and this defendant brings herewith into court and attaches and makes a part hereof a copy of the opinion of said superior court rendered upon the disallowance of said petition for removal.

(*b.*) That there has been a prior adjudication, as aforesaid, in said State court against the right of said petitioner to remove said cause, and that said adjudication was based not upon a question of fact nor upon a construction of the Constitution, laws, or treaties of the United States nor upon a controversy arising under the Constitution, laws, or treaties of the United States.

(*c.*) That in this cause there is no controversy which is wholly between citizens of different States nor a controversy which
963 can be fully determined as between citizens of different States.

(*d.*) That the controversy, as shown by the bill contained in said transcript, is one and inseparable, and is not wholly between citizens of different States and cannot be fully determined between citizens of different States.

(*e.*) That said controversy is not between said petitioner, on the one part, and the said Lake Street Elevated Railroad Company, on the other.

(*f.*) That said American Trust & Savings bank and said Northern Trust Company are both not only proper, but necessary, parties to said cause.

(*g.*) That the bond filed herein is not sufficient and does not comply with the statute in such cases made and provided.

(*h.*) That this honorable court has no jurisdiction to entertain said bill.

(*i.*) That this honorable court has no jurisdiction of the suit or controversy herein.

Wherefore, the premises considered, said American Trust & Savings Bank respectfully prays for the entry of an order herein setting aside the order permitting said transcript to be filed herein, and also for an order remanding said cause to the superior court of Cook county, Illinois.

Respectfully submitted.

MORAN, KRAUS & MAYER,
Sol'rs for said The American Trust & Savings Bank.

LEVY MAYER, *Of Counsel.*

964 On the same day, to wit, the seventeenth day of February, 1896, there was filed in the clerk's office of said court an ad-

ditional transcript of record from the superior court of Cook county, certified to by the clerk thereof under date of February 5th, A. D. 1896.

965 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

FARMERS' LOAN AND TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD COMPANY and NORTHERN TRUST COMPANY.

This is a motion made by the Farmers' Loan and Trust Company to remove this cause to the United States circuit court in and for the northern district of Illinois.

There are three defendants to this cause. The American Trust and Savings Bank and the Northern Trust Company are both residents and citizens of the State of Illinois. The Farmers' Loan and Trust Company, the third defendant, is a resident and citizen of the State of New York. The Lake Street Elevated Railroad Company is a resident and citizen of the State of Illinois. The trust deed appears to provide for two trustees, the Farmers' Loan and Trust Company and the American Trust and Savings bank. It is stated by counsel for the American Trust and Savings bank that it is the principal trustee. Even so, the trustees are granted equal powers by the trust deed. The trust deed further provides that if at any time hereafter either of the said trustees shall resign or be removed or otherwise cease to act, the successor or successors of such trustee shall be appointed by the remaining trustee.

Two questions are presented by the counsel for the various parties: First, whether or not the bond as filed by the Farmers' Loan and Trust Company is sufficient to base a removal upon; second, whether or not, assuming that the bond is good, the controversy is separable so as to enable the Farmers' Loan and Trust Com-
966 pany to prosecute the suit without the trustee, the American Trust and Savings bank, being a party to the suit.

In regard to the first point—that is, the sufficiency of the bond—the bond is signed by William Burry and Roswell King. It is not the bond of the Farmers' Loan and Trust Company and does not purport to be. The bond simply provides by its terms that if the Farmers' Loan and Trust Company does not pay all costs that may be awarded by the circuit court of the United States if that court should hold that the suit was improperly or wrongfully removed to the United States circuit court, then those who signed the bond will pay the same. Such a bond is not the bond contemplated by the statute. There has been a remark made here by counsel that courts tend strongly to retain jurisdiction of causes brought before them and are not inclined to allow cases to be taken away from them unless the law is very plain that they should transfer the causes from their jurisdiction. I do not know that that is so. A court

ought not to lean one way or another on that question. It ought to feel that the law, whatever it may be, should have its just construction, so that the fair intention of the legislature shall prevail. On the argument a case — cited in which Judge Drummond held that such a bond as this was good. It seems to me that his construction was forced. He says that the purpose alone is to be looked to and that a bond simply conditioned as is the bond in this case, for the purpose of removal, is sufficient. If the statute had said that the party petitioning might furnish security, it would not be open for construction, but the language is "shall make and file"
967 a bond. Now, I do not think it can be held that where a plaintiff is required to "make and file" a removal bond that John Jones and Tom Brown may "make and file" such a bond for him. Our Supreme Court has held in deciding the very question here under consideration in connection with a removal bond that it must be made by the petitioner or his agent.

Cleveland, &c., R. R. *v.* Monaghan, 140 Ill., 474, 484.

Weed Sewing Machine Co. *v.* Smith, 71 Ill., 204.

The affidavit filed with this bond is made by Mr. King, and is sufficient, so far as his financial standing is concerned. The affidavit does not contain the statement that he is a resident of this State. Mr. Burry has sought to remedy that defect by making a sworn statement in court today that he who signed the bond also is a resident of this State and worth the necessary money, and that King is also a resident of this State. I am of the opinion that the papers as made must stand or fall as filed on the last day of January. The motion to remove was filed on the 1st day of February, and I doubt whether on this hearing oral evidence can be offered for the purpose of changing the facts set up in the papers. In other words, this case does not go to the United States circuit court on a bill of exceptions or certificate of evidence. If it goes, it goes upon the petition and bond, and I do not see how the evidence which has been offered here, if properly admitted, could be preserved for purposes of such a removal. Of course the objection is technical, but the statute must have its fair construction. Now, as to the second point: It is probably true that the gist of this controversy is whether the Farmers' Loan and Trust Company may act as a trustee in this State, but it follows, I think, that no fair adjustment of that
968 controversy can be had without the American Trust and Savings bank being a party to the suit. True it is that if the court should hold that the Farmers' Loan and Trust Company might act as trustee there would be nothing to do but to dismiss the bill. If, on the contrary, it held that it could not exercise that function, then the court would be in duty bound to appoint or require the trustee, the American Trust and Savings bank, to appoint another trustee. Counsel has argued with some force that one trustee is as good as two. The fact remains that the parties, when this contract was made, determined that they required two trustees. They not only selected two trustees, but went to the trouble of providing that in case of resignation or removal or ceasing or incapacity

to act of one, the other shall appoint a successor. It is not for the court to make contracts for people. It cannot be argued that a second trustee is not necessary. It has been suggested that the object of this bill, while not perhaps stated—the object of the bill aside from the removal of the trustee—is to enjoin the Federal court from the foreclosure of the mortgage. It does not seem to me that that question arises on this motion. I think this court would be slow to grant an injunction restraining the Federal court from doing anything, and I should want a good deal of argument to satisfy me that the State court had any right to interfere with the Federal court on any such question. If there be such an injunction the State court, I think, would be always open to hear a motion to dissolve, so I do not think that that question is properly before the court on this motion.

Under the circumstances I am bound to decline to remove the cause, and therefore deny the motion.

Exception by Mr. Burry.

(Endorsed:) Filed Feb. 17, 1896. S. W. Burnham, clerk.

969 Afterwards, to wit, on the eighteenth day of February, 1896, came The Lake Street Elevated Railroad Company, complainant in said entitled cause, by its solicitors, and filed in the clerk's office of said court its motion; which said motion is in the words and figures following, to wit:

Motion of the Lake Street Elevated Railroad Co.

UNITED STATES OF AMERICA, } ss.:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
THE FARMERS' LOAN AND TRUST COMPANY, The American Trust & Savings Bank, and The Northern Trust Company, Defendants.
} In Chancery. Gen. No., 24003; Term No., 732.

And now comes the said complainant, The Lake Street Elevated Railroad Company, by Knight & Brown, its solicitors, for the purpose of this motion only, and moves this honorable court to remand the above-entitled cause to the superior court of Cook county, State of Illinois, from which said court the said cause was recently removed to this honorable court and is now pending herein, and which said motion is based upon the following grounds, viz:

First. That this court is without jurisdiction to hear and determine the cause, for the reason that there is not in this suit
970 any controversy which is wholly between citizens of different States and which can be fully determined as between them.

Second. That in the said suit so brought as aforesaid in said superior court of Cook county no process had been served upon the said defendant, The Farmers' Loan and Trust Company, at or prior to the time of the filing of the petition therein to remove, nor did the said The Farmers' Loan and Trust Company enter its appearance in said suit or in any way submit itself to the jurisdiction of said superior court of Cook county, nor was the Farmers' Loan and Trust Company served with a copy of said bill or notified of the commencement of the suit, as required by law.

Third. That the record of the proceedings in the superior court of Cook county as filed herein does not show that any summons or other process was ever issued by said superior court of Cook county at or prior to the time of the filing of the petition for the removal therein; that rule I of the superior court of Cook county, adopted and now in force therein, provides as follows:

"1. When any defendant who shall be summoned, served with a copy of the bill or petition, or notified of the commencement of the suit, as required by law, shall enter and file an appearance in writing before default taken, the party entering such appearance shall thereby, without any order, have twenty days from the first day of the appearance term in which to except, plead, answer, or demur. By appearance term is meant the term at which the party might be defaulted for failure to appear.

"When any defendant who has not been summoned, etc., as required by law, shall enter an appearance he shall give the complainant's solicitor immediate notice of the fact and shall except, plead, answer, or demur within twenty days after entering
971 such appearance."

Fourth. That the said superior court of Cook county, upon motion of petitioner The Farmers' Loan and Trust Company, passed upon the right to have said cause removed to this honorable court, and which said motion coming on to be heard, after argument of counsel, the court denied said petition and denied the right to remove said cause to this honorable court, and now claim jurisdiction over said cause and the matters therein set forth.

Fifth. That the petition and bond do not entitle said The Farmers' Loan and Trust Company to remove said cause; that said bond was insufficient and so determined by said superior court.

Sixth. That the matters in dispute in said suit do not exceed, exclusive of interest and costs, the sum of two thousand dollars.

KNIGHT & BROWN,
Solicitors for said Complainant.

(Endorsed:) Filed Feb. 18, 1896. S. W. Burnham, clerk.

972 On the same day, to wit, the eighteenth day of February, 1896, there was filed in the clerk's office of said court the affidavit of D. H. Louderback; which said affidavit is in the words and figures following, to wit:

Affidavit of D. H. Louderback.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court of the United States for the Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY, Complainant,
vs.
THE FARMERS' LOAN AND TRUST COMPANY, The American Trust and Savings Bank, and The Northern Trust Company, Defendants.
} In Chancery. Gen. No., 24003; Term No., 732.

STATE OF ILLINOIS, *County of Cook,* } ss:

D. H. Louderback, being first duly sworn, deposes and says that he is president of the complainant in the above-entitled cause.

Affiant further states that the matter in dispute between said complainant and The Farmers' Loan and Trust Company, exclusive of interest and costs, does not exceed the sum of two thousand dollars.

973 Affiant further states that at the time said The Farmers' Loan and Trust Company filed this petition for removal of said cause from the superior court of Cook county to this honorable court that said The Farmers' Loan and Trust Company had not been served with any process to appear and plead, answer, or demur to said bill of complaint.

Affiant further states that said The Farmers' Loan and Trust Company had not, at or prior to the time of the filing of said petition for removal, filed its appearance in said cause in the superior court of Cook county, and was not required by any rule or order of court or process to plead, answer, or demur at the time of or prior to the filing of said petition for removal.

Affiant further states that rule I, adopted by the superior court of Cook county, Illinois, provides as follows:

"I. When any defendant who shall be summoned, served with a copy of the bill or petition, or notified of the commencement of the suit, as required by law, shall enter and file an appearance in writing, before default taken, the party entering such appearance shall thereby, without any order, have twenty days from the first day of the appearance term in which to except, plead, answer, or demur. By appearance term is meant the term at which the party might be defaulted for failure to appear.

"When any defendant who has not been summoned, etc., as required by law, shall enter an appearance, he shall give the complainant's solicitor immediate notice of the fact, and shall except, plead, answer or demur within twenty days after entering such ap-

pearance." And that said rule was in full force and effect at the time said petition for removal was filed as aforesaid.

974 Affiant further states that an injunction writ was issued in said cause and served upon William Burry before any process was served upon said complainant in the said bill of complaint exhibited in this honorable court by said The Farmers' Loan and Trust Company, on the 30th day of January, 1896, against the said The Lake Street Elevated Railroad Company and the American Trust & Savings bank, a copy of which said injunction writ is hereto attached and marked "Exhibit A" and made a part hereof.

Affiant further states that he denies that said The Farmers' Loan and Trust Company, in filing and exhibiting its said bill in chancery for foreclosure of the said mortgage referred to in said petition, was acting under and by virtue of the terms, provisions, and conditions of said mortgage.

Affiant further states that on Monday, January 27th, A. D. 1896, a conference was held with said William Burry, acting as agent and representing the Farmers' Loan and Trust Company, and Mr. Levy Mayer, as counsel for the American Trust and Savings bank, and Mr. Gilbert B. Shaw, as president of the American Trust & Savings bank; Mr. Clarence A. Knight, counsel for the Lake Street Elevated Railroad Company, and affiant, concerning the question as to whether there ought or ought not to be a foreclosure of said mortgage.

Affiant further states that at said conference affiant and said Knight protested against the right of either of said trustees to bring any suit to foreclose said mortgage or take any action in regard thereto.

975 Affiant further states that at said conference said William Burry, so representing the Farmers' Loan and Trust Company, stated that no request had been made upon said The Farmers' Loan and Trust Company asking any action to foreclose said mortgage or take other proceedings thereunder, excepting by those persons represented by William Ziegler and representing 610 of the first-mortgage bonds of said company. Affiant then stated to said Burry that a request had been made upon said trustees to take no action under said mortgage signed by the holders of 6,574 of said first-mortgage bonds, and that said trustees were enjoined from taking any action at the request of the holders of 605 of said 610 Ziegler bonds, so called, and that if any action was taken by said trustees under said mortgage it would be wholly without warrant or authority and against the best interests of not only the bondholders but of the company as well.

Affiant further states that the total issue of bonds under said trust deed or mortgage is 7,574 bonds.

Affiant further states that at the conclusion of said conference on Monday, as aforesaid, the representatives of the American Trust & Savings bank then stated to said Burry that it would consider the said matter of commencing said foreclosure proceedings, and would notify him upon the following day—Tuesday—as to what action, if any, it would take thereunder.

Affiant further states that on Tuesday following said Monday the said American Trust & Savings bank did notify said Burry that it declined to join in any foreclosure proceedings under said mortgage.

976 Affiant further states that notwithstanding said fact that said Burry was notified of the action of said American Trust & Savings bank upon Tuesday, yet said Burry caused to be written and sent to affiant, president of said railroad company, at 444 North Clark street, in the North division of the city of Chicago, a letter notifying this affiant that it would on the following Thursday morning file a bill to foreclose said mortgage on behalf of the Farmers' Loan and Trust Company.

Affiant further states that he received no notice from said Burry of his intention to take any such action until Thursday morning upon his arrival at his office; thereupon affiant, believing that said The Farmers' Loan and Trust Company had no authority or power whatsoever to file any such bill, caused the writ of injunction to be issued, as aforesaid, upon the bill of complaint filed, as aforesaid, in the superior court of Cook county.

D. H. LOUDERBACK.

Subscribed and sworn to before me this 13th day of February, A. D. 1896.

EUGENE STEWART,
Notary Public.

[SEAL.]

EXHIBIT A.

Injunction Writ.

STATE OF ILLINOIS, } ss:
Cook County, }

Circuit Court.

The People of the State of Illinois to the Farmers' Loan and Trust Company and your attorneys, solicitors, agents, and servants, and to each and every of them, Greeting:

977 Whereas it hath been represented to the honorable the judges of the circuit court of Cook county, in the State aforesaid, on the part of The Lake Street Elevated Railroad Company, complainant, in its certain bill of complaint, exhibited before said judges and filed in said court against you, the said The Farmers' Loan & Trust Company, The American Trust & Savings Bank, and The Northern Trust Company, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience, and Honorable —— ——, one of said judges, having under his hands endorsed upon said bill an order that a writ of injunction issue out of said court according to the prayer of said bill, we therefore, in consideration thereof and of the particular matters in said bill set forth, do strictly command you, the said The Farmers' Loan

& Trust Company, and the persons before mentioned and each and every of you, that you do absolutely desist and refrain from the Farmers' Loan & Trust Company taking any proceeding & bringing or prosecuting any suit or suits or acting in any manner whatsoever under and by virtue of the terms, provisions, and conditions of mortgage or deed of trust of April 7th, 1893, made by the Lake Street Elevated Railroad Company to said The Farmers' Loan & Trust Company and The American Trust & Savings Bank until this honorable court, in chancery sitting, shall make other order to the contrary. Hereof fail not, under penalty of what the law directs.

To the sheriff of said county to execute and return in due form of law.

978 Witness Stephen D. Griffin, clerk of said court, and the seal thereof, at Chicago aforesaid, this 30 day of January, [SEAL.] A. D. 1896.

STEPHEN D. GRIFFIN, *Clerk.*

(Endorsed:) Filed Feb. 18, 1896. S. W. Burnham, clerk.

979 On the same day, to wit, the eighteenth day of February, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Entry.

LAKE STREET ELEVATED RAILROAD COMPANY *vs.* FARMERS' LOAN AND TRUST COMPANY ET AL.	24003.	In Chancery.

Now come the parties, by their solicitors. On motion, leave is hereby granted the American Trust and Savings bank to file additional record from the superior court of Cook county.

Now comes on to be heard the motion to remand this cause. The court, after hearing the arguments of counsel in part, postpones the further hearing of this matter until tomorrow morning.

980 Afterwards, to wit, on the nineteenth day of February, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Entry.

LAKE STREET ELEVATED RAILROAD COMPANY *vs.* FARMERS' LOAN AND TRUST COMPANY ET AL.	24003.	In Chancery.

Now again come the parties, by their solicitors, and now again comes on to be heard the motion to remand. The court, after hear-

ing further arguments of counsel on said motion, postpones the further hearing thereon until tomorrow morning at eleven a. m.

981 Afterwards, to wit, on the twentieth day of February, 1896, there was filed in the clerk's office of said court the affidavit of John H. Miller; which said affidavit is in the words and figures following, to wit:

Affidavit of John A. Miller.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court, Northern District of Illinois.

THE LAKE STREET ELEVATED RAILROAD COMPANY
vs.
THE FARMERS' LOAN AND TRUST COMPANY, Northern Trust Company, *et al.*
} Removal from the Superior Court of Cook County.

STATE OF ILLINOIS, } ss:
County of Cook, }

John H. Miller, being first duly sworn, deposes and says that he is an attorney-at-law and employed in the office of Knight & Brown, solicitors for the Lake Street Elevated Railroad Company.

Affiant further states that the writ of subpœna issued in the case of The Farmers' Loan and Trust Company *vs.* The Lake
982 Street Elevated Railroad Company out of the said United States circuit court for the northern district of Illinois was served upon the president of the Lake Street Elevated Railroad Company on February 18th, 1896, at four o'clock p. m., by the United States marshal for said district, and no service was had upon said Lake Street Elevated Railroad Company in said cause prior to said service last named.

Affiant further states that on the morning of February 19, 1896, he inquired at the office of the United States marshal as to when said writ was placed in their hands and was informed at the office of said United States marshal that said writ was placed in their hands on the morning of February 18, 1896, by a young man, with directions to serve the same, and in pursuance of such direction said marshal did serve said writ.

Affiant further states that the said young man so leaving said writ of subpœna as aforesaid was an employé in the office of Messrs. Runnells & Burry, solicitors for said The Farmers' Loan and Trust Company, as affiant is informed and verily believes.

Affiant further states that such service of said writ was made under and by the directions of said Runnells & Burry.

And further affiant saith not.

JOHN H. MILLER.

Subscribed and sworn to before me this 20 day of February, A. D. 1896.

ALICE G. NELSON,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Feb. 20, 1896. S. W. Burnham, clerk.

983 On the same day, to wit, the twentieth day of February, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

LAKE STREET ELEVATED RAILROAD COMPANY
vs.
FARMERS' LOAN AND TRUST COMPANY *et al.*
} 24003. In Chancery.

Now again come the parties, by their solicitors. Now again comes on to be heard the motion to remand. The court after hearing the arguments of counsel in conclusion take this matter under advisement.

984 Afterwards, to wit, on the sixteenth day of March, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

LAKE STREET ELEVATED RAILROAD COMPANY
vs.
FARMERS' LOAN AND TRUST COMPANY ET AL.
} 24003. In Chancery.

On this day the court having fully considered the motions heretofore submitted by said Lake Street Elevated Railroad Company and said Northern Trust Company to remand this cause to the superior court of Cook county, and the motion of the American Trust and Savings Bank to strike this cause from the docket of this court, it is ordered that all said motions be overruled and denied; and it is further ordered that the injunction heretofore granted herein be modified so as to allow the solicitors of said Farmers' Loan and Trust Company to present and argue the demurrers in the cause of The Farmers' Loan and Trust Company against The Lake Street Elevated Railroad Company *et al.*, now pending in this court, and to file an amended bill therein.

985 Afterwards, to wit, on the seventeenth day of March, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

LAKE STREET ELEVATED RAILROAD COMPANY
vs.
FARMERS' LOAN AND TRUST COMPANY ET AL. } 24003. In Chancery.

Now come the parties, by their solicitors. It is ordered by the court that the motion to dissolve the injunction heretofore issued herein be set down for hearing on Thursday, March 26, 1896, at eleven a. m.

It is further ordered that the defendants file their answer by Tuesday morning at 10 o'clock.

986 NORTHERN DISTRICT OF ILLINOIS, } *ss.*
Northern Division,

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true copy of the full record, proceedings, and files (except the transcript of record from the superior court of Cook county, certified by the clerk thereof under date of February 4, 1896, to be a true copy of the record and proceedings in said superior court up to that date, which transcript was filed in this court on February 4, 1896, and except the supplemental transcript of record from the superior court of Cook county, certified by the clerk thereof under date of February 5, 1896, to be a true copy of certain objections, which transcript was filed in this court on February 17, 1896) in the cause wherein Lake Street Elevated Railroad Company is complainant and Farmers' Loan and Trust Company, American Trust and Savings Bank, and The Northern Trust Company are the defendants, as the same appears from the originals thereof now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 23rd day of March, A. D. 1896.

S. W. BURNHAM, *Clerk.*

987 Mr. BURRY: Also a certified copy of the order of Judge Grosscup entered April 21, 1896, which embodies also their prayer for an appeal to the circuit court of appeals.

The COURT: For what purpose is that offered?

Mr. BURRY: It is to show acquiescence in the Federal court jurisdiction.

Mr. HERRICK: And also to present the point to your honor—which, of course, is a question of law—whether by going into that court after the cause had been removed and moving to remand, and taking the judgment of that court on the motion to remand on a question of which the Federal court had jurisdiction, and the judgment going against them, they are not adjudicated as a matter of law. We make the point that there is a difference between the action upon the original application when it is presented to the State court and the voluntary appearance in the Federal court after the record has been transferred there and the moving to remand and taking the judgment of the Federal court on that motion, our posi-

tion being, as a matter of law, that the Federal court has jurisdiction to pass on that question recognized and established by the decisions.

The COURT: Can this court be deprived of jurisdiction by some act of some party to a lawsuit?

Mr. HERRICK: If they themselves voluntarily go in and
988 make their motion and take the adjudication we have a right to set up that adjudication and show it in a suit brought by them if we are right in our legal proposition. The position is this: If on that motion to remand the decision had been in their favor under the express decisions of the Supreme Court of the United States, that would be final on all courts. If the case had been remanded back to your honor and had gone through the different stages to the Supreme Court of the United States, under the express decisions of the Supreme Court of the United States, that judgment would have been final on the defendant to remove the cause; and by force of the same reasoning, having taken the judgment of that court on that Federal question, they should be adjudicated if the decision is against them.

Mr. MAYER: My objection is based upon this ground: An application was made to this court to remove the cause to the Federal court. The motion was in writing, was argued, and was adjudicated, holding that the cause was not removable. They procured an *ex parte* order from the Federal court giving them leave to file the transcript. We thereupon went in and moved to strike the transcript from the files, and brought to the attention of the court as part of our motion the record in this case, which had been omitted from that record, showing an application to this court and an adjudication of this court, and pleaded that to the jurisdiction of the Federal court. There never was any appearance entered in the Fed-
989 eral court, except for the purpose of pleading to its jurisdiction, and the motion, which is in this transcript, will show that the court is informed it has no jurisdiction, because in the State court application was made, argued, and adjudicated. Now, then, to admit into this record the proof now tendered is for the court to stultify itself, and to say I decided that I had jurisdiction, and I will permit you to introduce any record evidence that I didn't have jurisdiction. Such a stultification is hardly consistent.

The COURT: You need not argue it at length. I simply want the position of the other side. The objection is sustained. I don't care what view that court had taken after I had passed upon it.

Mr. HERRICK: I did not intend, of course, to present any view that would be questioning your honor's judgment in the matter. It was simply to present the question of law that would be made by that state of the record.

The COURT: You have a perfect right to present it. I have no criticism about that. But I have a right to reject it, and you have no criticism about that.

Mr. HERRICK: Except this, if your honor will allow me: Every particle of evidence that has been offered thus far has been admitted subject to objection. Of course, we cannot argue it fully and at

length on this preliminary offer of evidence, and I call your honor's attention to the fact that counsel has put into the record a
990 great deal of matter regarding which the questions being presented will be argued hereafter, and I suggest that we be allowed to introduce this in evidence, and then it will be received subject to objection.

The COURT: The rule I have adopted in these matters is that where the matter may appear to be competent or pertinent to let it go in, where that affects the conduct of the parties to the controversy in any manner in which it ought to be considered as affecting their rights. In the matter now offered it is largely a matter of the court's jurisdiction, and all occurring subsequent to the filing of the bill in this case, and it can only be offered for the purpose of affecting the jurisdiction of the court, not the conduct of the parties themselves as affecting the right to a foreclosure or any motive which may have impelled the defendant to attempt foreclosure. That is my view of it; hence it cannot be offered for any purpose. It does not tend to affect the issues involved in this lawsuit.

To which ruling of the court counsel for defendant The Farmers' Loan & Trust Company then and there duly excepted.

(Said order, entered by Judge Grosscup on said April 21, 1896, in said cause in said United States court and so ruled out and refused to be admitted in evidence by the court as aforesaid, was as follows, to wit:)

991 "United States Circuit Court, Northern District of Illinois, Northern Division.

TUESDAY, *April* 21, 1896.

Present: Hon. Peter S. Grosscup, district judge.

THE LAKE STREET ELEVATED RAILROAD Company
vs.
THE FARMERS' LOAN AND TRUST COMPANY, The American Trust and Savings Bank, and The Northern Trust Company. } In Chancery. 24003.

This day comes the complainant in the above entitled cause and presents its petition for appeal from the order of this court, entered on the 21st day of April, A. D. 1896, dissolving the injunction heretofore granted in the above-entitled cause, and also its assignment of errors herein; and the court being fully advised in the premises, it is ordered that the said petition be, and the same is hereby, granted, and that an appeal be, and the same is hereby, allowed to said complainant from the order entered herein on the 21st day of April, 1896, dissolving the injunction in said cause to the circuit court of appeals of the United States for the seventh circuit upon the complainant filing within — days an appeal bond, conditioned according to law, in the penal sum of five hundred dollars.

And thereupon the said complainant presented in open court an

appeal bond in the sum of $500.00, with D. H. Louderback as surety, and the same is hereby approved and ordered filed."

992 Mr. BURRY: I next offer in evidence—it has already been offered by the other side, but I do it from excess of caution——

The COURT: If it is in what is the use of offering it again?

Mr. BURRY: The bill and amended bill in the foreclosure suit in the Federal court.

The COURT: Counsel has leave to avail himself of anything in that, notwithstanding it is offered by the other side, and the objection is sustained.

Mr. BURRY: Then, it being in, I want to call the attention of the court very briefly to it. It is the foreclosure bill, setting up the making of the mortgage. It is of considerable length, being in the ordinary form of a foreclosure bill for about half a million dollars of interest on these bonds.

The COURT: That is the bill filed on the 30th of January in the Federal court.

Mr. BURRY: No; this is the amended one.

Mr. KNIGHT: That is in evidence.

Mr. BURRY: Yes.

The COURT: What bill is this?

Mr. BURRY: The cause commenced on the 30th of January, 1896.

Mr. HERRICK: It is the amended bill of foreclosure.

Mr. KNIGHT: Which I offered yesterday.

Mr. HERRICK: You did not give the date of the filing. I think we ought to have that in the record.

993 Mr. BURRY: The bill was filed January 30th, half an hour before this case was commenced. It was in the regular form of a foreclosure bill, alleging default in payment of three successive coupons, amounting to half a million dollars, and sets up the mortgage. The amended bill does the same and then goes ahead and puts in these additional notices about scaling, and all that matter is in the foreclosure suit for adjudication there. My purpose in presenting the bill is to show that all these issues are already made in the foreclosure case.

Mr. MAYER: What is the date of the filing of the amended bill?

Mr. BURRY: March 16th, I think.

Mr. MAYER: That ought to appear in the record.

Mr. BURRY: I offer certified copy of the demurrer of the American Trust & Savings bank to the bill of foreclosure referred to, filed in the Federal court on February 1st, 1896.

Mr. MAYER: That is the demurrer to the original bill. That is why I was careful to inquire when they filed that amended bill.

Mr. BURRY: To the bill of foreclosure. I meant the original bill.

Mr. MAYER: Let it appear it is the demurrer filed to the original bill, raising the jurisdiction of the court, and then the amended bill put in new facts to give the court jurisdiction.

994 Mr. BURRY: Also the demurrers of the Union Elevated Railroad Company and the Northern Trust Company to said original foreclosure bill filed within a day or two thereafter. I have forgotten the date of filing.

The order of the United States court in that foreclosure cause, entered March 16th, 1896, allowing an amended foreclosure bill to be filed, which was filed that date.

The order of the United States court in that foreclosure cause on motion of solicitors for defendants therein that they have time to answer the amended bill and fixing the time for answering.

Mr. KNIGHT: That I object to because that was on behalf of the defendants The American Trust & Savings Bank and The Northern Trust Company.

Mr. BURRY: I do not know that it was.

Mr. MAYER: I drafted the order myself in your presence. You know what it was.

Mr. BURRY: I remember very particularly Mr. Knight asked to the 27th of February in which to answer, but the order may have been written up differently.

The COURT: Have you got it here?

Mr. BURRY: I haven't got it here. I will have it here this afternoon before the argument.

The COURT: Then strike that all out.

995 JOHN R. MCGURREN, called as a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. Burry and testified as follows:

Q. Mr. McGurren, you are connected with the office of Knight & Brown, are you not?

A. Yes, sir.

Q. Was it you that served a copy of the writ of injunction in this cause at 11 o'clock and 10 minutes on the morning of January 30th, 1896?

A. Yes, sir; I served the writ on you.

Q. Was it you that procured this writ from the clerk?

A. No, sir.

Q. Was it you that filed the bill?

A. I don't remember whether I filed it or not.

Q. Were you present when the bill was filed?

A. That I cannot say. I don't remember whether I was present or not.

Q. From whom did you get this writ?

A. I got that writ from Mr. Brown.

Q. Where?

A. In the corridor, right outside of Judge Windes' court-room, where you were arguing.

Q. Can you tell me in whose handwriting the writ is made out—the restraining part of it?

Objected to by counsel for complainant as immaterial. Objection

overruled by the court; to which ruling of the court counsel for complainant then and there duly excepted.

996 A. I cannot say for sure, Mr. Burry. I think the writ is made out in the handwriting of Mr. Miller, a clerk in our office.

Q. Were you with Mr. Brown in the clerk's office that morning?
A. No, sir; I was not.
Q. Were you in the Federal court that morning?
A. Yes, sir.

Objected to by counsel for complainant as immaterial.

Mr. BURRY: It is to show the relative time of the commencement of these two suits.

Mr. KNIGHT: You went up to the Federal court after you served Mr. Burry, did you not?
A. Yes, sir.
Mr. BURRY: Were you there before or after you served the writ?
A. I was there after I served the writ on you.
Q. Were you there before also?
A. No, sir.
Q. Do you know where Mr. Brown came from when he brought that writ to you?
A. No, sir; I don't.

Cross-examination.

By Mr. KNIGHT:

Q. Mr. McGurren, weren't you also watching at the time the clerk's office of the circuit court to catch Mr. Burry if he was going to file a bill there?
A. Yes, sir; I was.
Mr. BURRY: For what purpose were you watching for me?
A. Just simply watching you to serve the writ of injunc-
997 tion on you. For what purpose I don't know.
Q. Where?
A. I was in the corridor. I was standing in the clerk of the superior court's office.
Q. Waiting until the writ should be issued so as to serve me at once?
A. I understood Mr. Brown was preparing a writ.
Q. You were waiting to receive it and serve me at once?
A. Yes, sir.
Q. And you did so?
A. Yes, sir.
Q. For what purpose did you go to the Federal court?
A. Mr. Brown, after I served the writ on you, asked me to step down to the Federal court and see in a general way what was going on.
Q. What did you find out was going on?

A. I stepped into the clerk's office and saw Mr. Judah there. He being in the case, I asked him what had occurred.
Q. Never mind that.

998 CHARLES S. WILLISTON, called as a witness on behalf of the defendant The Farmers' Loan & Trust Company in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. BURRY:

Q. Were you present at the time the bill was filed in this case, on the morning of January 30th, 1896?
A. I was.
Q. What did you do immediately thereafter in this connection?
A. We noted the time, and you asked——

Mr. KNIGHT: I object to any statement made by him.

A. I went to the Federal court clerk's office.
Mr. BURRY: Immediately?
A. Yes, sir; within twenty seconds.
Q. For what purpose?
A. To stop, if possible, the filing of a suit in the foreclosure——
Q. Did you go to the Federal clerk's office?
A. Yes.
Q. To stop, if possible, the filing of a foreclosure?
A. Yes.
Q. What did you find there?
A. I found it had already been filed.
Q. When did you make inquiries about it?
A. As soon as I could determine from inquiries——

Mr. KNIGHT: I object.
999 The COURT: Objection sustained.

Mr. BURRY: What inquiries did you make in relation to the suit in this court?
A. I went to the clerk of the superior court——
Q. And did you find a bill had been filed there?
A. The present bill; yes, sir.
Q. Did you make any inquiries about the time it was filed?
A. Yes, sir.
Q. What did you learn?

Mr. KNIGHT: Objected to.
The COURT: Objection sustained.

Cross-examination by Mr. KNIGHT:

Q. Did you come over to court with Mr. Burry that morning?
A. I did.
Q. Judge Horton's court?
A. No, sir.
Q. What court?
A. Judge Windes'.

Q. And was you at the office—did you and Mr. Burry leave the office together?
A. What office?
Q. Your office.
A. No, sir.
Q. Who in your office took this bill to the United States court?
A. Mr. Fraser.
Q. Was you present that morning when the bill was
1000 handed to Mr. Fraser?
A. I was.
Q. What time in the morning was it?
A. About ten or twelve minutes after ten.
Q. Who handed it to Mr. Fraser?
A. Mr. Burry.
Q. With directions to file it?
A. Yes, sir.
Q. You heard the directions?
A. I did.
Q. When did you see that bill before that morning; when did you last see it?
A. I couldn't say.
Q. How long before?
A. I couldn't say that.
Q. How long before that morning was that bill drawn?
A. I do not know.
Q. About how long?
A. I don't know.
Q. Wasn't it drawn in the month of December?
A. I don't know.
Q. Had you seen it before that morning?
A. I had seen parts of it. I don't know whether it was completed before——
Q. When did you see parts of it?
A. I couldn't say.
Q. How long before?
A. I couldn't state.
Q. A week?
A. I don't know.
Q. Two weeks?
A. I don't know anything at all. I couldn't state positively when that bill was started.
Q. I am not asking you to state positively. I say about when.
A. That I couldn't say.
Q. Can't you tell within a month?
A. No, sir.
Q. Can't you tell within a week?
1001 A. I have no personal knowledge now in the matter.
Q. Who prepared the bill?
A. Mr. Burry prepared the bill.
Q. Was it prepared that morning?
A. I really can't say when it was finished.

Q. I don't ask you when it was finished.
A. I don't know what I could say pertaining to that.
Q. Was it begun that morning—dictated that morning?
A. The whole bill?
Q. Part of it.
A. I couldn't say.
Q. Was it dictated the day before?
A. I couldn't say whether a part of it was or not.
Q. Did you hear any part of it dictated before that?
A. I wouldn't like to testify as to that.
Q. You won't say whether you heard it dictated or not?
A. I don't know whether I did or not.

Mr. BURRY: This is objected to as not cross-examination.
Mr. KNIGHT: When did you see the first part of that bill before that day?
Mr. BURRY: Same objection.
The COURT: What is the point?
Mr. BURRY: It is not cross-examination.

The COURT: Do you know anything about the preparation of that bill?
A. All I can answer as to that I know certain papers were being drawn up in that case, but I was in the outer office, and I
1002 cannot positively swear to the drawing up of any of that document.
Q. Are you admitted to the bar?
A. Yes, sir.
Q. When you speak of a paper generally—you know what parts of a bill are, don't you?
A. I do.
Q. Do you know anything about when the bill was prepared?
A. I couldn't say positively; no, sir; because I had no personal connection with it whatever.

The COURT: Ask him something else.

Mr. KNIGHT: What is your position in the office there?
A. Clerk for the firm of Runnells & Burry.
Q. You have charge of the filing of bills?
A. Where do you mean?
Q. Filing of bills in court?
A. At times.
Q. You give directions about filing bills in court?
A. I do.
Q. Did you bind this bill together after it came out of the typewriter's hands?
A. That I couldn't say.
Q. Isn't that a part of your duties also?
A. At times.
Q. Did you bind that bill together that morning?
A. I couldn't state that.

Q. Do you know whether or not it was bound together shortly prior to ten minutes before ten o'clock?

A. I couldn't state whether I bound this bill or not.

Q. How do you remember ten minutes past ten o'clock?

A. We were in Judge Windes' court-room.

1003 Q. Did you have the bill there with you?

A. I didn't have it.

Q. Did Mr. Burry have it?

A. I think that he had it; yes.

Q. He had it there, then?

A. He did.

Q. Was Fraser there with you?

A. He came in about ten minutes after ten.

Q. And Mr. Burry then immediately handed it to you or asked you to go down and file it, did he not?

A. I think Mr. Burry handed it to him. I think I didn't touch it.

Q. Now, you say you did not bind that bill together that morning?

A. I couldn't swear; no; I didn't say so.

Q. Did you bind it together the day before?

A. I don't know.

Q. You don't know as to that?

A. No, sir.

Mr. BURRY: How long does it take ordinarily to walk from the State court-house to the Federal court-house?

A. Five to seven minutes.

The COURT: You don't want me to understand that you can walk it in from five to seven minutes?

A. I can.

Mr. BURRY: If the court please, with the exception of Mr. Fraser, whom I wish to call, and Mr. Brown, as to the time of filing the bill, we are through.

Mr. KNIGHT: Well, subject to the objection, I don't think 1004 there will be any difficulty about that part of it.

The COURT: You admit if the witnesses were here they would swear to that?

Mr. KNIGHT: That that bill was filed at 10.35, and our witnesses testify we filed our- about ten minutes after it, and I think that appears in the record, at least I want it to appear so, and that no service was had in the foreclosure bill in the United States court until long after service in this case.

Mr. BURRY: It is admitted that the bill in this case was filed not earlier than ten minutes before eleven on January 30th, 1896, and that the foreclosure bill referred to was filed in the Federal court not later than thirty-five minutes after ten o'clock on January 30th, 1896, and that the Lake Street Elevated Railroad Company was not served with process in the foreclosure case until February 18th, 1896. Is that satisfactory?

Mr. KNIGHT: Yes.

Mr. BURRY: Our case is closed.

1005 WILLIAM BURRY, called as a witness on behalf of the complainant in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. KNIGHT:

Q. What is your name?
A. William Burry.
Q. Your profession?
A. Attorney.
Q. Practicing in Chicago, Illinois?
A. Yes, sir.
Q. Mr. Burry, you caused to be filed the foreclosure bill spoken of in this case, did you not?
A. Yes.
Q. Referred to by the last witness on the stand?
A. Yes.
Q. You prepared that bill?
A. I did.
Q. When did you prepare it?

Mr. HERRICK: Objected to as immaterial.
The COURT: He may answer.

A. The bill filed was prepared, to the best of my knowledge and recollection, on the day preceding the filing.
Mr. KNIGHT: When was the original draft of it prepared?
A. I think that it was—that I did some work about it, as to some of the allegation part, between my first interview with Mr. Shaw, which, I think, was on the 26th day of January, and the day we met for consultation at Mr. Mayer's office, which, I think, was
1006 on the 27th or 28th. Whether some little beginning was done at that time or not—that was the first beginning of it, but it was not completed at that conversation. I think it was completed on the 28th, copies on the 29th, and filed on the morning of the 30th.
Q. You had commenced the preparation of the bill prior to the conference at Mr. Mayer's office?
A. Yes; so I stated at that time to all the parties there assembled that I thought we would file it.
Q. You knew at the conference that I was representing the Lake Street Elevated Railroad Company, did you not?
A. Yes.
Q. And when we closed that conference was it not understood that we should be notified as to any change of your opinion as to what course you should pursue?
A. I don't remember any such arrangement or agreement—that I was to notify you.
Q. Will you explain to the court, Mr. Burry, why you notified Mr. Louderback instead of notifying me of your intention to file the bill?
A. Because I think I had practically—my last communications had come from Mr. Louderback.

Q. Hadn't I had a conversation with you only a few days preceding that in regard to the leasing of the Humboldt Park line?

A. Yes; but after that I received——

Q. And didn't you know I represented all legal matters connected with the Lake Street road?

A. No.

1007 Q. What legal matters did you ever discover that I did not represent in regard to the Lake Street road?

A. The two last communications I had, the 27th and the 28th, relating to our foreclosure bill, I think, you will find came from Mr. Louderback to me—of the 28th and of the 27th, after our interview—and I replied to him on the 29th.

Q. And wasn't that in pursuance of an agreement made at Mr. Mayer's office that such information should be furnished you by Mr. Louderback?

A. No; there was nothing said about an agreement. It was an act of courtesy. I remember of no such agreement.

Q. Wasn't it agreed that Mr. Louderback should send you a statement showing the exact financial condition of the road at once by mail?

A. He said he would send me a statement.

Q. Yes, and that letter was in pursuance of that, was it not?

A. Very likely.

Q. Now, Mr. Burry, isn't it a fact that you expected that we would file a bill to have you removed as trustee and you tried to get your bill in first?

A. No; that was mentioned at one time. In the first place, you had filed a bill on the 30th of December, just a month previous, enjoining the foreclosure. Something was said—why, if that can be done you might as well ask the court to enjoin everything, and I said I didn't believe that such a thing could be done.

1008 Q. Haven't you told me since the filing of this bill that you expected that we would file our bill and get ahead of you, and therefore you proposed to file your bill at once?

A. No; I don't remember of mentioning any such thing.

Q. Didn't make any such statement?

A. Not that I remember of. I think in regard to what I have just said that there was some talk, and I may have said during our conversation at Mr. Mayer's office that possibly the Lake Street people would have filed a bill to enjoin the foreclosure case, but that such a proceeding would be ridiculous.

Q. Now, you remember the conference at Mr. Shaw's bank between Mr. Shaw, Mr. Mayer, and yourself, do you not?

A. Yes; I think it was on the 25th.

Q. And didn't you state at that time that you had this bill then prepared?

A. No; I think that I said we thought we would file a bill.

Q. You had made up your mind on the 25th to file a bill?

A. No; I said we thought we would file a bill.

Q. Now, didn't you ask Mr. Mayer not to give us any notice that

you were going to file a bill at that time; at this conversation between you and Mayer and Shaw?

A. At one time I suggested to Mr. Mayer that, as they had filed one bill to enjoin foreclosure case, they might enter, and without notice, and I didn't think that courtesy called for any communication with the Lake Street Company on our filing our bill.

1009 Q. And which bill you had ready to file?

A. No; it was not ready.

Q. Substantially ready, wasn't it?

A. No; it was not substantially ready, but I made that point when I said I didn't think you people were entitled to any notice on the ground that you had prior to that time gotten an injunction a month before, and I said therefore you were not entitled to any prior notice of this bill.

Q. That injunction is still in full force, is it not?

A. I think so. I don't think any motion to dissolve it has ever been heard.

(Cross-examination waived.)

Mr. KNIGHT: I desire now to offer in evidence the record in the case of William Ziegler *vs.* The Lake Street Elevated Railroad Company *et al.*, certified to by the clerk of the United States court.

Mr. HERRICK: I object to that as immaterial.

The COURT: It is shown in the complainant's proof that the trustees asked and I assume were informed of the proceedings in the Ziegler case, and the record of that case is admissible as tending to show knowledge on the part of the trustees of whatever was done there as effecting the motive which impelled him to

1010 bring the bill to foreclose. I do not regard the opinion of the court as important or material. The result of the suit is, it may be admitted for that purpose.

Mr. KNIGHT: The whole record?

The COURT: Yes.

(Said record in said case of William Ziegler *vs.* The Lake Street Elevated Railroad Company *et al.* was thereupon read in evidence by counsel for complainant, and is in the words and figures following, to wit:)

1011 (Said certified copy of said demurrers was thereupon read in evidence by counsel for said defendant, The Farmers' Loan & Trust Company, and was as follows, to wit:)

Demurrer of American Trust & Savings Bank.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss.:

In the Circuit Court of the United States in and for said Division.
In Chancery.

THE FARMERS' LOAN & TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD COMPANY, UNION ELEVATED RAILROAD COMPANY, NORTHWESTERN ELEVATED RAILROAD COMPANY, WEST CHICAGO STREET RAILROAD COMPANY, AMERICAN TRUST & SAVINGS BANK.
Bill. Gen. No., 23995. Term No., 724.

The separate demurrer of The American Trust & Savings Bank, the above-named defendant, to the bill of complaint of the Farmers' Loan & Trust Company.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

1. That the said complainant has not, in and by its said bill of complaint, made or stated such a cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant touching the matters contained in said bill or any such matters.

1012 2. That it appears in and by said bill of complaint that The American Trust & Savings Bank, trustee, is an indispensable party complainant to said bill of complaint.

3. That The American Trust & Savings Bank, as trustee, is not made a party to said bill of complaint.

4. That it appears in and by said bill of complaint that the interests of this defendant are identical with the interests of and wholly upon the side of the complainant in said bill and contrary to and hostile to the interests of the other defendants to said bill of complaint, and that by reason thereof there is not shown or alleged in said bill of complaint a controversy between parties on the one part or side who are all citizens, respectively, of States other than the State or States of which the parties on the other part or side are, respectively, citizens.

5. That it appears in and by said bill of complaint that this court has no jurisdiction over either the parties or the subject-matter in dispute.

6. That it does not appear that in and by said bill of complaint that this court has jurisdiction over the subject-matter or parties to said bill of complaint.

7. That it appears in and by said bill of complaint that the said

complainant brings said bill of complaint without right or authority to ask the relief therein prayed.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to said bill of complaint and to all matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

1013 THE AMERICAN TRUST & SAVINGS BANK,
By MORAN, KRAUS & MAYER,
Its Solicitors.

LEVY MAYER, *Of Counsel.*

I hereby certify that in my opinion the foregoing demurrer is well founded in law and proper to be filed herein.

LEVY MAYER,
Of Counsel in said Cause for said American Trust & Savings Bank.

STATE OF ILLINOIS, } ss.:
County of Cook, }

J. R. Chapman, being first duly sworn, deposes and says that he is the cashier of the said defendant, The American Trust & Savings Bank, and that the foregoing demurrer of said defendant, The American Trust & Savings Bank, is not interposed for delay.

J. R. CHAPMAN.

Subscribed and sworn to before me, a notary public in and for said Cook county, this 1st day of February, A. D. 1896.

ALFRED S. AUSTRIAN,
[SEAL.]— *Notary Public.*

(Endorsed:) Filed Feb. 1, 1896. S. W. Burnham, clerk.

1014 *Demurrer of Northwestern Elevated R. R. Company.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States in and for said Division.
In Chancery.

THE FARMERS' LOAN & TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD COMPANY, UNION ELEVATED RAILROAD COMPANY, NORTHWESTERN ELEVATED RAILROAD COMPANY, WEST CHICAGO STREET RAILROAD COMPANY, AMERICAN TRUST & SAVINGS BANK.
Bill. Gen. No., 23995. Term No., 724.

The separate demurrer of The Northwestern Elevated Railroad Company, one of the above-named defendants, to the bill of complaint of the Farmers' Loan & Trust Company.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

1. That the said complainant has not, in and by its said bill of complaint, made or stated such a cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant touching the matters contained in said bill or any such matters.

1015 2. That it appears in and by said bill of complaint that The American Trust & Savings Bank, as trustee, is an indispensable party complainant to said bill of complaint.

3. That The American Trust & Savings Bank, as trustee, is not made a party to said bill of complaint.

4. That it appears in and by said bill of complaint that the interests of the American Trust & Savings bank are identical with the interests of and wholly upon the side of the complainant in said bill and contrary to and hostile to the interests of the other defendants to said bill of complaint, and that by reason thereof there is not shown or alleged in said bill of complaint a controversy between parties on the one part or side who are all citizens respectively of States other than the State or States of which the parties on the other part or side are respectively citizens.

5. That it appears in and by said bill of complaint that this court has no jurisdiction over either the parties or the subject-matter in dispute.

6. That it appears in and by said bill of complaint that the said complainant brings this bill of complaint without right or authority to ask the relief therein prayed.

Wherefore, and for divers other good causes of demurrer appear-

ing in said bill of complaint, this defendant doth demur to said bill of complaint and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE NORTHWESTERN ELEVATED RAILROAD COMPANY,
By DUPEE, JUDAH, WILLARD & WOLF,
Its Solicitors.

DUPEE, JUDAH, WILLARD & WOLF, *Of Counsel.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in law and proper to be filed herein.

1016 NOBLE B. JUDAH,
Of Counsel in said Cause for said The Northwestern Elevated Railroad Company.

STATE OF ILLINOIS, } ss.:
County of Cook, }

Howard Abel, being first duly sworn, deposes and says that he is the secretary of the said defendant, The Northwestern Elevated Railroad Company, and that the foregoing demurrer of said defendant, The Northwestern Elevated Railroad Company, is not interposed for delay.

HOWARD ABEL.

Subscribed and sworn to before me, a notary public in and for said Cook county, this 10th day of February, A. D. 1896.

O. T. WHARTON,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Feb. 14, 1896. S. W Burnham, clerk.

1017 *Demurrer of Union Elevated R. R. Company.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the Circuit Court of the United States in and for said Division.
In Chancery.

THE FARMERS' LOAN & TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD COMPANY, UNION ELEVATED RAILROAD COMPANY, NORTHWESTERN ELEVATED RAILROAD COMPANY, WEST CHICAGO STREET RAILROAD COMPANY, AMERICAN TRUST & SAVINGS BANK.

Bill. Gen. No., 23995; Term No., 724.

The separate demurrer of The Union Elevated Railroad Company, one of the above-named defendants, to the bill of complaint of the Farmers' Loan & Trust Company.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

1. That the said complainant has not in and by its said bill of complaint made or stated such a cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant touching the matters contained in said bill or any such matters.

1018 2. That it appears in and by said bill of complaint that The American Trust & Savings Bank, as trustee, is an indispensable party complainant to said bill of complaint.

3. That The American Trust & Savings Bank, as trustee, is not made a party to said bill of complaint.

4. That it appears in and by said bill of complaint that the interests of the American Trust & Savings bank are identical with the interests of and wholly upon the side of the complainant in said bill and contrary to and hostile to the interests of the other defendants to said bill of complaint, and that by reason thereof there is not shown or alleged in said bill of complaint a controversy between parties on the one part or side who are all citizens respectively of States other than the State or States of which the parties on the other part or side are respectively citizens.

5. That it appears in and by said bill of complaint that this court has no jurisdiction over either the parties or the subject-matter in dispute.

6. That it appears in and by said bill of complaint that the said complainant brings this bill of complaint without right or authority to ask the relief therein prayed.

Wherefore, and for divers other goods causes of demurrer appear-

ing in said bill of complaint, this defendant doth demur to said bill of complaint and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

UNION ELEVATED RAILROAD COMPANY,
By KNIGHT & BROWN, *Its Solicitors.*

KNIGHT & BROWN, *Of Counsel.*

I hereby certify that in my opinion the foregoing demurrer is well founded in law and proper to be filed herein.

1019 CLARENCE A. KNIGHT,
Of Counsel in said Cause for said Union Elevated Railroad Company.

STATE OF ILLINOIS, } ss:
County of Cook, }

A. P. Clausonthue, being first duly sworn, deposes and says that he is the secretary of the said defendant, Union Elevated R. R. Co., and that the foregoing demurrer of said defendant, Union Elevated R. R. Co., is not interposed for delay.

A. P. CLAUSONTHUE.

Subscribed and sworn to before me, a notary public in and for said Cook county, this 10th day of February, A. D. 1896.

O. T. WHARTON,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Mar. 2, 1896. S. W. Burnham, clerk.

1020 *Demurrer of West Chicago Street Railroad Company.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

In the Circuit Court of the United States in and for said Division.
In Chancery.

THE FARMERS' LOAN AND TRUST COMPANY *vs.* THE LAKE STREET ELEVATED RAILROAD COMPANY, a Corporation, etc.; Union Elevated Railroad Company, a Corporation, etc.; Northwestern Elevated Railroad Company, West Chicago Street Railroad Company, American Trust & Savings Bank.	Bill. 23995; 725.

The separate demurrer of The West Chicago Street Railroad Company, one of the above-named defendants, to the bill of complaint of the Farmers' Loan and Trust Company.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be

true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

1. That the said complainant has not in and by its said bill of complaint made or stated such a cause as doth or ought to
1021 entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant touching the matters contained in said bill or any such matters.

2. That it appears in and by said bill of complaint that The American Trust & Savings Bank, as trustee, is an indispensable party complainant to said bill of complainant.

3. That The American Trust & Savings Bank, as trustee, is not made a party to said bill of complaint.

4. That it appears in and by said bill of complaint that the interests of the American Trust & Savings bank are identical with the interests of and wholly upon the side of the complainant in said bill and contrary to and hostile to the interests of the other defendants to said bill of complaint, and that by reason thereof there is not shown or alleged in said bill of complaint a controversy between parties of the one part or side who are all citizens respectively of States other than the State or States of which the parties on the other part or side are respectively citizens.

5. Now it appears in and by said bill of complaint that this court has no jurisdiction over either the parties or the subject-matter in dispute.

6. That it appears in and by said bill of complaint that the said complainant brings this bill of complaint without right or authority to ask the relief therein prayed.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to said bill of complaint and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its reasonable costs and
1022 charges in this behalf most wrongfully sustained.

THE WEST CHICAGO STREET RAILROAD COMPANY,
By EGBERT JAMISON, *Its Solicitor.*

EGBERT JAMISON, *Of Counsel.*

I hereby certify that in my opinion the foregoing demurrer is well founded in law and proper to be filed herein.

EGBERT JAMISON,
Of Counsel in said Cause for said The West Chicago Street Railroad Co.

STATE OF ILLINOIS, }
County of Cook, } ss:

Jno. B. Parsons, being first duly sworn, deposes and says that he is vice president of the said defendant, The West Chicago Street Railroad Company, and that the foregoing demurrer of said de-

fendant, The West Chicago Street Railroad Company, is not interposed for delay.

JNO. B. PARSONS.

Subscribed and sworn to before me, a notary public in and for said Cook county, this 2nd day of March, A. D. 1896.

JOSEPH DEVLIN,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Mar. 2, 1896. S. W. Burnham, clerk.

1023 *Demurrer of the West Chicago Street Railroad Company.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States in and for said Division.
In Chancery.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE LAKE STREET ELEVATED RAILROAD Company, The Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, The West Chicago Street Railroad Company, and American Trust & Savings Bank.

Bill. G. No., 23995; T. No., 725.

The separate demurrer of The West Chicago Street Railroad Company, one of the above-named defendants, to the amended bill of complaint of the Farmers' Loan and Trust Company.

This defendant, by protestation, not confessing nor acknowledging all or any of the matters and things in the said complainant's amended bill to be true in such manner and form as the same are therein set forth and alleged, *both* demur thereto, and for cause of demurrer showeth:

1. That the said complainant has not in and by its said amended bill of complaint made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant touching the matters contained in said amended bill or any such matters.

1024 2. That it appears in and by said amended bill of complaint that The American Trust & Savings Bank, as trustee, is an indispensable party complainant to said amended bill of complaint.

3. That The American Trust & Savings Bank, as trustee, is not made a party to said amended bill of complaint.

4. That it appears in and by said amended bill of complaint that the interests of the American Trust & Savings bank are identical with the interests of and wholly upon the side of the complainant in said amended bill and contrary to and hostile to the interests of

the other defendants to said amended bill of complaint, and that by reason thereof there is not shown or alleged in said amended bill of complaint a controversy between parties on the one part or side who are all citizens respectively of States other than the State or States of which the parties on the other part or side are respectively citizens.

5. That it appears in and by said amended bill of complaint that this court has no jurisdiction over either the parties or subject-matter in dispute.

6. That it appears in and by said amended bill of complaint that the said complainant brings this amended bill of complaint without right or authority to ask the relief therein prayed.

Wherefore, and for divers other good causes of demurrer appearing in said amended bill of complaint, this defendant doth demur to said amended bill of complaint and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said amended bill, and prays to be hence dismissed
1025 with its reasonable costs and charges in this behalf most wrongfully sustained.

WEST CHICAGO STREET RAILROAD COMPANY,
By EGBERT JAMISON, *Its Solicitor.*

EGBERT JAMISON, *Of Counsel.*

I hereby certify that in my opinion the foregoing demurrer is well founded in law and proper to be filed herein.

EGBERT JAMISON,
Of Counsel in said Cause for said West Chicago St. R. R. Co., Defendant.

STATE OF ILLINOIS, }
County of Cook, } ss:

John B. Parsons, being first duly sworn, deposes and says that he is the vice-president of said defendant, The West Chicago Street Railroad Company, and that the foregoing demurrer of said defendant, The West Chicago Street Railroad Company, is not interposed for delay.

JNO. B. PARSONS.

Subscribed and sworn to before me, a notary public in and for said Cook county, this 23rd day of April, A. D. 1896.

C. H. CHAMBERLAIN,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Apr. 24, 1896. S. W. Burnham, clerk.

1026 *Demurrer of the Lake Street Elevated Railroad Company.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States in and for said Division.
In Chancery.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE LAKE STREET ELEVATED RAILROAD Company, The Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, The West Chicago Street Railroad Company, and American Trust & Savings Bank. } Bill. G. No., 23995; T. No., 725.

The separate demurrer of The Lake Street Elevated Railroad Company, one of the above-named defendants, to the amended bill of complaint of the Farmers' Loan and Trust Company.

This defendant, by protestation, not confessing nor acknowledging all or any of the matters and things in the said complainant's amended bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

1. That the said complainant has not in and by its said amended bill of complaint made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant touching the
1027 matters contained in said amended bill or any such matters.

2. That it appears in and by said amended bill of complaint that The American Trust & Savings Bank, as trustee, is an indispensable party complainant to said amended bill of complai*nant*.

3. That The American Trust & Savings Bank, as trustee, is not made a party to said amended bill of complaint.

4. That it appears in and by said amended bill of complaint that the interests of the American Trust & Savings bank are identical with the interests of and wholly upon the side of the complainant in said amended bill and contrary to and hostile to the interests of the other defendants to said amended bill of complaint, and that by reason thereof there is not shown or alleged in said amended bill of complaint a controversy between parties on the one part or side who are all citizens respectively of States other than the State or States of which the parties on the other part or side are respectively citizens.

5. That it appears in and by said amended bill of complaint that this court has no jurisdiction over either the parties or the subject-matter in dispute.

6. That it appears in and by said amended bill of complaint that

the said complainant brings this amended bill of complaint without right or authority to ask the relief therein prayed.

Wherefore, and for divers other good causes of demurrer appearing in said amended bill of complaint, this defendant doth demur to said amended bill of complaint and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said amended bill, and prays to be hence dismissed
1028 with its reasonable costs and charges in this behalf most wrongfully sustained.

THE LAKE STREET ELEVATED RAILROAD COMPANY,
By KNIGHT AND BROWN, *Its Solicitors.*

KNIGHT AND BROWN, *Of Counsel.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in law and proper to be filed herein.

CLARENCE A. KNIGHT,
Of Counsel in said Cause for said The Lake Street Elevated Railroad Company, Defendant.

STATE OF ILLINOIS, } ss:
County of Cook, }

D. H. Louderback, being first duly sworn, deposes and says that he is the president of said defendant, The Lake Street Elevated Railroad Company, and that the foregoing demurrer of said defendant, The Lake Street Elevated Railroad Company, is not interposed for delay.

D. H. LOUDERBACK.

Subscribed and sworn to before me, a notary public in and for said Cook county, this 22nd day of April, A. D. 1896.

B. C. STIDGER,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Apr. 24, 1896. S. W. Burnham, clerk.

1029 *Demurrer of the Union Elevated Railroad Company to Amended Bill.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States in and for said Division.
In Chancery.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE LAKE STREET ELEVATED RAILROAD Company, The Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, The West Chicago Street Railroad Company, and American Trust & Savings Bank.

Bill. G. No., 23995; T. No., 725.

The separate demurrer of The Union Elevated Railroad Company, one of the above-named defendants, to the amended bill of complaint of the Farmers' Loan and Trust Company.

This defendant, by protestation, not confessing nor acknowledging all or any of the matters and things in the said complainant's amended bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

1. That the said complainant has not in and by its said amended bill of complaint made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant touching the matters contained in said amended bill or any such matters.

1030 2. That it appears in and by said amended bill of complaint that The American Trust & Savings Bank as trustee is an indispensable party complainant to said amended bill of complaint.

3. That The American Trust & Savings Bank as trustee is not made a party to said amended bill of complaint.

4. That it appears in and by said amended bill of complaint that the interests of the American Trust & Savings bank are identical with the interests of and wholly upon the side of the complainant in said amended bill and contrary to and hostile to the interests of the other defendants to said amended bill of complaint, and that by reason thereof there is not shown or alleged in said amended bill of complaint a controversy between parties on the one part or side who are all citizens, respectively, of States other than the State or States of which the parties on the other part or side are respectively citizens.

5. That it appears in and by said amended bill of complaint that this court has no jurisdiction over either the parties or subject-matter in dispute.

6. That it appears in and by said amended bill of complaint that the said complainant brings this amended bill of complaint without right or authority to ask the relief therein prayed.

Wherefore, and for divers other good causes of demurrer appearing in said amended bill of complaint, this defendant doth demur to said amended bill of complaint and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said amended bill, and prays to be hence dismissed
1031 with its reasonable costs and charges in this behalf most wrongfully sustained.

THE UNION ELEVATED RAILROAD COMPANY,
By KNIGHT AND BROWN, *Its Solicitors.*

KNIGHT AND BROWN, *Of Counsel.*

I hereby certify that in my opinion the foregoing demurrer is well founded in law and proper to be filed herein.

CLARENCE A. KNIGHT,
Of Counsel in said Cause for said The Union Elevated Railroad Company, Defendant.

STATE OF ILLINOIS, }
County of Cook, } ss:

L. W. Perce, being first duly sworn, deposes and says that he is the president of said defendant, The Union Elevated Railroad Company, and that the foregoing demurrer of said defendant, The Union Elevated Railroad Company, is not interposed for delay.

LE GRAND W. PERCE.

Subscribed and sworn to before me, a notary public in and for said Cook county, this 22nd day of April, A. D. 1896.

B. C. STIDGER,
Notary Public.

[SEAL.]

(Endorsed:) Filed Apr. 24, 1896. S. W. Burnham, clerk.

1032 *Demurrer of the Northwestern Elevated Railroad Company.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States in and for said Division.
In Chancery.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE LAKE STREET ELEVATED RAILROAD Company, The Union Elevated Railroad Company, The Northwestern Elevated Railroad Company, The West Chicago Street Railroad Company, and American Trust & Savings Bank.

Bill. G. No., 23995; T. No., 725.

The separate demurrer of The Northwestern Elevated Railroad Company, one of the above-named defendants, to the amended bill of complaint of the Farmers' Loan and Trust Company.

This defendant, by protestation, not confessing nor acknowledging all or any of the matters and things in the said complainant's amended bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer showeth:

1. That the said complainant has not in and by its said amended bill of complaint made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against this defendant touching the matters contained in said amended bill or any such matters.

1033 2. That it appears in and by said amended bill of complaint that The American Trust & Savings Bank, as trustee, is an indispensable party complainant to said amended bill of complaint.

3. That The American Trust & Savings Bank, as trustee, is not made a party to said amended bill of complaint.

4. That it appears in and by said amended bill of complaint that the interests of the American Trust & Savings bank are identical with the interests of and wholly upon the side of the complainant in said amended bill and contrary to and hostile to the interests of the other defendants to said amended bill of complaint, and that by reason thereof there is not shown or alleged in said amended bill of complaint a controversy between parties on the one part or side who are all citizens, respectively, of States other than the State or States of which the parties on the other part or side are respectively citizens.

5. That it appears in and by said amended bill of complaint that this court has no jurisdiction over either the parties or subject-matter in dispute.

6. That it appears in and by said amended bill of complaint that

the said complainant brings this amended bill of complaint without right or authority to ask the relief therein prayed.

Wherefore, and for divers other good causes of demurrer appearing in said amended bill of complaint, this defendant doth demur to said amended bill of complaint and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said amended bill, and prays to be hence dismissed
1034 with its reasonable costs and charges in this behalf most wrongfully sustained.

THE NORTHWESTERN ELEVATED RAILROAD COMPANY,
By DUPEE, JUDAH, WILLARD & WOLF,
Its Solicitors.

NOBLE B. JUDAH, *Of Counsel.*

I hereby certify that in my opinion the foregoing demurrer is well founded in law and proper to be filed herein.

NOBLE B. JUDAH,
Of Counsel in said Cause for said Northwestern Elevated Railroad Company, Defendant.

STATE OF ILLINOIS, } ss:
County of Cook, }

C. D. Hotchkiss, being first duly sworn, deposes and says that he is the vice-president of said defendant, Northwestern Elevated Railroad Company, and that the foregoing demurrer of said defendant, The Northwestern Elevated Railroad Company, is not interposed for delay.

C. D. HOTCHKISS.

Subscribed and sworn to before me, a notary public in and for said Cook county, this 22nd day of April, A. D. 1896.

B. C. STIDGER,
Notary Public.

[SEAL.]

(Endorsed:) Filed Apr. 24, 1896. S. W. Burnham, clerk.

1035 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be true and correct copies of the demurrer of American Trust & Savings bank, filed February 1, 1896; demurrer of Northwestern Elevated Railroad Company, filed February 14, 1896; demurrer of Union Elevated Railroad Company, filed March 2, 1896; demurrer of West Chicago Street Railroad Company, filed March 2, 1896; demurrer of the Lake Street Elevated Railroad Company, filed April 24, 1896; the demurrer of the North Western Elevated Railroad Company, filed April 24, 1896; the demurrer of the Union Elevated Railroad Company, filed April 24, 1896, and demurrer of

the West Chicago Street Railroad Company, filed April 24, 1896, in said court in the cause wherein The Farmers' Loan and Trust Company is the complainant and Lake Street Elevated Railroad Company *et al.* are the defendants, as the same appears from the original files now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at my office, in Chicago, in said district, this 7th day of May, A. D. 1896.

S. W. BURNHAM, *Clerk.*

1036 (Said order entered in said cause in said United States circuit court was thereupon read in evidence by counsel for said defendant, The Farmers' Loan & Trust Company, and was as follows, to wit:)

"Now come the parties, by their solicitors. Leave is hereby granted to all parties hereto to plead, answer, or demur to the bill of complaint within twenty (20) days after the first Monday in April."

1037 Mr. MAYER: What is the purpose of that, Mr. Burry?

Mr. BURRY: To show acquiescence in the suit and proceeding with it without questioning the right of the trustee to bring it.

Mr. HERRICK: The parties are in court in the foreclosure case and can raise whatever questions there are on the foreclosure bill.

Mr. BURRY: This is a very extraordinary kind of a suit, and we think that this shows they are there without raising any question in the foreclosure suit. I mean this is a peculiar kind of a suit; it is a bill to enjoin a suit in chancery.

Mr. KNIGHT: I want to say regarding that that after the injunction was served in this case the records of the court show that Mr. Burry went and obtained the subpœnas and had them served upon the Lake Street Elevated Railroad Company, commanding them to appear at the first day of the next term of court; rule day. That was not served in time for that, and therefore we had to appear on the following rule day, which was April 1st——

Mr. BURRY: April was your appearance day.

Mr. KNIGHT: In the United States court we protested against his right to file an amended bill in violation of the injunction, but the court refused to regard our protest and insisted that we proceed or they would take default, and we were therefore compelled to appear by reason of their process. It was not voluntary on
1038 our part, but simply forced by Mr. Burry in prosecuting that case notwithstanding the injunction of this court.

Mr. MAYER: I fail to understand the remote pertinency of these documents now offered in evidence. The present bill is to remove the trustee, first, because he has not complied with the law; secondly, because he is abusing his powers. Now, what possible relation the demurrers filed in the Federal court can have on this hearing I do not understand.

The COURT: It may go in subject to objection.

Mr. BURRY: They are all voluntary appearances.

The COURT: We can determine the facts later.

Mr. MAYER: I think the record ought to show without our getting subpœnas that the defendants, in that court, to that cause were served in time to make it necessary to plead at the time these demurrers were filed.

The COURT: I suppose you admit that.

Mr. BURRY: Oh, no; that is not so. There was only one defendant served, The Lake Street Company, and it is admitted that it was served on the 18th of February.

Mr. MAYER: You say the American Trust Company was not served?

Mr. BURRY: Not served at all. Only one defendant served in the foreclosure case.

Mr. MAYER: I cannot speak as to that——

Mr. BURRY: They being served on the 18th of February, the appearance day was the first Monday in April. It has to
1039 be twenty days before the Monday, and its answer day was the first Monday in May. They appeared on the 2nd of March, a month ahead of the time required. Everything was voluntary.

Mr. KNIGHT: Not the Lake Street Company?

Mr. BURRY: Yes, sir.

Mr. KNIGHT: No, sir.

Mr. MAYER: When the original bill was filed which showed want of jurisdiction in the Federal court, we at once filed a demurrer to that bill and pressed for a hearing, and every move we made for a hearing we were met with opposition; then, weeks thereafter, this amended bill of foreclosure was filed, and to that we have not yet pleaded. Is not that true, Mr. Burry?

Mr. BURRY: What is it?

Mr. MAYER: Isn't it true that we have not yet pleaded to your amended bill?

Mr. BURRY: The American Trust & Savings bank extended the time——

Mr. MAYER: The court extended the time. We have not pleaded to the amended bill, but to the original bill we demurred.

Mr. BURRY: The latter part is all right.

Mr. MAYER: With that statement in the record I have no objection to the demurrers to the original bill so far as my client is concerned.

Mr. KNIGHT: I wish to state, then, on behalf of the Lake
1040 Street road——

Mr. BURRY: I don't understand that any statements are going into the record in this case——

Mr. KNIGHT: I will testify, as a witness, then, on this point that up to the time of the service of the subpœna against the Lake Street road on February 18th, it never had appeared in this foreclosure case, and it only appeared in obedience to that subpœna and under protest in open court to the court and every time it took any part in those proceedings on behalf of the Lake Street road, and this demurrer was filed after your honor dissolved the injunction in this

case and because we were forced to do it by reason of the court threatening to let the case go by default.

The COURT: What is the date of the demurrer?

Mr. KNIGHT: April 24th.

Mr. BURRY: I suppose I may cross examine Mr. Knight?

The COURT: Yes.

Mr. MAYER: Let us see if there is any difference between us, Mr. Burry. It is agreed that the American Trust & Savings Company demurred to the original foreclosure bill?

Mr. BURRY: Yes.

Mr. MAYER: And that it has not yet pleaded nor has its time expired in which to plead to the amended bill?

Mr. BURRY: It has not yet pleaded.

Mr. MAYER: Nor has its time under the order of court to plead expired?

1040½ Mr. BURRY: Its time by agreement with counsel and subsequently by order of the court has not yet expired. I gave them several days and then they took further time.

Mr. MAYER: We are obliged for your courtesy, but the facts are as I have stated them.

Mr. BURRY: Those are the facts.

Mr. Knight, did you file on March 2nd, 1896, in the foreclosure case, the demurrer for The Union Elevated Railroad Company, one of the defendants in the foreclosure bill?

A. Yes.

Q. Did you file that voluntarily or after service?

A. I don't remember. I don't think there was any service on me.

Q. Did you press that demurrer for hearing before Judge Grosscup about March 16th—ask that the demurrer be heard on the original bill?

A. No; I don't think that I did.

Q. Who did?

A. I think Mr. Mayer was pressing it on behalf of the American Trust & Savings bank, but I was present in court.

Q. Wasn't Mr. Judah pressing it also on behalf of the North-Western Elevated Railroad Company?

A. I think possibly he was.

Q. Of which Mr. Louderback is president?

A. I don't know that he is the president of the Northwestern Elevated Railroad Company.

Q. He has testified so.

1041 Mr. MAYER: If it is in the record why ask the question?

Mr. BURRY: Were you present, Mr. Knight, in court on behalf of the Union Elevated Railroad Company when they were pressing those demurrers to hearing on March 16th?

Mr. KNIGHT: I was in court.

Q. Did you take part in pressing the demurrer for the Union Elevated Railroad Company for hearing on that day?

A. I don't think there was any particular pressing on it.

Q. You asked that it be heard, did you not?

A. No; I don't think that I did. I think I protested and ob-

jected all the while to the court permitting any amended bill to be filed in that case, and asked in that case that Mr. Burry be attached for contempt of court in asking leave of the court to file an amended bill, and also in placing the subpœna in the hands of the marshall to be served in violation of the injunction of this court and the injunction pending in that court.

Q. My question related solely to the demurrer filed by you on behalf of the Union Elevated Railroad Company to the original bill of foreclosure.

A. Yes; I don't think I pressed that demurrer, because I was objecting all the while.

The COURT: Don't repeat. Just ask the question.

Mr. BURRY: Were you in court when that demurrer was called up?

The COURT: He said he was.

Mr. KNIGHT: I was.

Mr. BURRY: Were you in court on the 17th of March,
1042 when leave was given to all parties to the foreclosure case to plead, answer, or demurrer within twenty days after the first Monday of April?

A. I was in court on that date.

Q. Was that date suggested by you?

A. There was no such order of court entered as that.

Q. Was that date suggested by you?

A. What?

Q. 27th of April; was that date suggested by you?

A. For setting the case?

Q. As to the time in which to answer.

A. No, sir.

Q. Who suggested it?

A. I don't remember who suggested it; there was a good deal of wrangling, though, over it there.

Mr. BURRY: That is all.

The COURT: Are you through?

Mr. BURRY: We are.

The COURT: Anything on the other side?

Mr. KNIGHT: We have nothing else, your honor.

1043 Which was all the evidence offered or received on the hearing of said cause.

And inasmuch as the matters above set forth do not fully appear of record in this suit, the defendant The Farmers' Loan & Trust Company tenders this certificate of evidence, and prays that the same may be certified under the hand and seal of the judge of this court and thereby made a part of the record in such cause, and it is certified accordingly this 16th day of July, in the year of our Lord one thousand eight hundred and ninety-six (A. D. 1896).

JOHN BARTON PAYNE, [L. S.]
Judge of said Superior Court of Cook County, State of Illinois.

1044 And on the 8th day of June, A. D. 1896, there was filed in the office of the clerk of said court a certain appeal bond, which is in words and figures as follows, to wit:

1045 Know all men by these presents that the Farmers' Loan & Trust Company, a corporation existing under the laws of the State of New York, and Ingolf K. Boyesen are held and firmly bound unto the Lake Street Elevated Railroad Company of Chicago, Illinois, in the penal sum of twenty-five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, our executors, administrators, and successors, jointly, severally, and firmly by these presents.

In witness whereof we have executed these presents this 4th day of June, A. D. 1896.

The condition of the above obligation is such that whereas the said The Lake Street Elevated Railroad Company did, on the 4th day of June, A. D. 1896, in the superior court of Cook county, in the State of Illinois, recover a decree against the said bounden The Farmers' Loan & Trust Company for certain relief and for costs of suit in a certain cause in said court pending, bearing general number 172,156, wherein the said The Lake Street Elevated Railroad Company was complainant and The Farmers' Loan & Trust Company and others were defendants, from which said decree of the said superior court of Cook county the Farmers' Loan & Trust Company has prayed for and obtained an appeal to the appellate court in and for the first district of said State:

1046 Now, therefore, if the said The Farmers' Loan & Trust Company shall duly prosecute its said appeal with effect and pay the damages and costs rendered and to be rendered against it in case the said decree shall be affirmed, then the above obligation to be void; otherwise to remain in full force and virtue.

1047 THE FARMERS' LOAN & TRUST COMPANY,
By R. G. ROLSTON, *President.*
INGOLF K. BOYESEN.

Attest: E. S. MORTON, *Sec'y.* [SEAL.]

O K.
LILL.

6, 6, '96.

O K.
KNIGHT & BROWN,
Solicitors for Complainant.
DUPEE, JUDAH, WILLARD & WOLF,
For Nor. Trust Company.

STATE OF NEW YORK, }
City and County of New York, } ss:

On this 4th day of June, in the year one thousand eight hundre and ninety-six, before me personally came Rosewell G. Rolston, t

me personally known, who, being by me duly sworn, did depose and say that he resides at Babylon, Suffolk county, New York; that he is the president of the Farmers' Loan & Trust Company, the corporation described in and which executed the foregoing instrument; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by the like order as president of said corporation.

W. B. CARDOZO,

[SEAL.] *Notary Public No.* 18, *New York County.*

Approved:
JOHN BARTON PAYNE, *Judge.*

1048 STATE OF ILLINOIS, } *ss.*:
County of Cook, }

I, Stephen D. Griffin, clerk of the superior court of Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record, except the certificate of evidence, the original of which is by stipulation of the parties incorporated herein and made a part hereof, in a certain cause lately pending in said court on the chancery side thereof, wherein The Lake Street Elevated Railroad Company was complainant and The Farmers' Loan & Trust Company *et al.* were defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 28th day of July, A. D. 1896.

[SEAL.] STEPHEN D. GRIFFIN, *Clerk.*

Trans. fees, $25; paid.

1049 In the Appellate Court of Illinois, First District, October Term, A. D. 1896.

THE FARMERS' LOAN AND TRUST COMPANY, Appellant,
vs.
THE LAKE STREET ELEVATED RAILROAD COMPANY, The American Trust and Savings Bank, and The Northern Trust Company, Appellees.
} Appeal from Superior Court of Cook County, Illinois.

Assignment of Errors.

And now comes the said The Farmers' Loan and Trust Company, the appellant, by Runnelle & Burry and Herrick, Allen, Boyeson & Martin, its solicitors, and says that in the record and proceedings herein and in rendering the said decree herein on the fourth (4th) day of June, A. D. 1896, there is manifest error in this, to wit:

1050 1. The court below erred in entering herein on the third (3rd) day of February, 1896, the order of that date set out in the transcript of record herein.

2. The court below erred in ordering in and by said order entered herein on the third (3rd) day of February, 1896, that the motion, with petition and bond, for the removal of this cause to the United States circuit court be denied.

3. The court below erred in denying the petition of the appellant, The Farmers' Loan and Trust Company, for the removal of this cause to the United States circuit court.

4. The court below erred in *nor* accepting the petition and bond for removal to the United States circuit court filed herein by appellant, The Farmers' Loan and Trust Company, and in not ordering the removal of the case to said United States circuit court.

5. The court below erred in retaining jurisdiction of this cause after the filing herein and presentation to said court of said petition and bond for removal to the United States circuit court by appellant, The Farmers' Loan and Trust Company.

6. The court below erred in taking proceedings in this court after the filing herein and presentation to said court of said petition and bond for removal to the United States circuit court by appellant, The Farmers' Loan and Trust Company.

1051 7. The court below erred in entering the said decree of June 4, 1896, herein, after the filing herein and presentation to said court of said petition and bond for removal to the United States circuit court by appellant, The Farmers' Loan and Trust Company.

8. The court below erred in entering herein on the 18th day of March, A. D. 1896, the order of that date set forth in the transcript of record herein.

9. The court below erred in ordering in and by said order entered herein on said 18th day of March, 1896, that the paper therein mentioned, filed herein on said 18th day of March, 1896, be stricken from the files in this cause.

10. The court below erred in finding in and by said order entered herein on said 18th day of March, A. D. 1896, that it had jurisdiction of the parties and the subject-matter of this cause.

11. The court below erred in finding in and by said order entered herein on said 18th day of March, 1896, that said paper mentioned therein, filed herein on that day by Runnells & Burry in behalf of said The Farmers' Loan and Trust Company, was improperly and improvidently filed, and was an insufficient and improper appearance and motion.

12. The court below erred in ordering in and by said order entered herein on said 18th day of March, 1896, that said paper mentioned in the last foregoing assignment of error be stricken from the files of this cause.

1052 13. The said decree entered herein on the fourth (4th) day of June, A. D. 1896, is void for want of jurisdiction.

14. The court below erred in finding and adjudging by its said

decree entered herein on the fourth (4th) day of June, A. D. 1896, as follows, to wit:

"It appearing to the court that all the parties are properly before the court, and that the court has jurisdiction of the subject-matter of the said bill of complaint and all of the parties hereto, and the court, being fully advised in the premises, doth find that the court has jurisdiction of all the parties hereto and of the subject-matter hereof."

15. The court below erred in finding and adjudging in and by said decree entered herein on the fourth (4th) day of June, A. D. 1896, that it had jurisdiction of the cause and of all the parties hereto.

16. The court below erred in proceeding in this cause and in entering herein said decree (entered herein on the fourth (4th) day of June, A. D. 1896) after the docketing of the cause in the said United States circuit court and the motions to remand the same made in said United States circuit court by said complainant, The Lake Street Elevated Railroad Company, and by the defendants The American Trust and Savings Bank and The Northern Trust Company, respectively, and the order of said United States circuit court denying said motions to remand and the other proceed-
1053 ings in said United States circuit court shown in evidence on the hearing of this cause in the court below.

17. The court below erred in ordering, adjudging, and decreeing in and by the said decree herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"It is therefore ordered, adjudged, and decreed by the court that the said defendant, The Farmers' Loan and Trust Company, be, and the same is hereby, removed as trustee or cotrustee under the said mortgage or deed of trust made, executed, and delivered by said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, which said mortgage or deed of trust is dated the seventh (7th) day of April, A. D. 1893, and was duly filed for record in the office of the recorder of deeds of the county of Cook, in the State of Illinois, on the 6th day of May, A. D. 1893, and there recorded in Book 4256 of Records, at page 230, and which was afterwards and on the 11th day of May, 1893, duly filed in the office of the secretary of state of the State of Illinois, and there recorded in Book 12, at page 266."

18. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on the said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"It is therefore ordered, adjudged, and decreed by the court that the said defendant, The Farmers' Loan and Trust Company,
1054 be, and it is hereby, removed as trustee or cotrustee under the said mortgage or deed of trust made, executed, and delivered by said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as

trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee."

19. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed by the court that the said defendant, The Farmers' Loan and Trust Company, and its attorneys, solicitors, officers, agents, and servants, and each and every of them, be, and they are hereby, perpetually enjoined and restrained from taking any proceedings or bringing or prosecuting any suit or suits to foreclose said mortgage or trust deed from said complainant to said American Trust and Savings bank and said Farmers' Loan and Trust Company, or acting in any manner whatsoever under and by virtue of the terms, provisions, and conditions of said mortgage or deed of trust so made, executed, and delivered by the said complainant, The Lake Street Elevated Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee."

20. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follow, to wit:

1055 "And it is further ordered, adjudged, and decreed by the court that the said defendant, The Farmers' Loan and Trust Company, and its attorneys, solicitors, officers, agents, and servants and each and every of them be, and they are hereby, perpetually enjoined and restrained from taking any proceedings or bringing or prosecuting any suit or suits to foreclose said mortgage or trust deed from said complainant to said American Trust and Savings bank and said Farmers' Loan and Trust Company."

21. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, that the said defendant, The Farmers' Loan and Trust Company, and its attorneys, solicitors, officers, agents, and servants and each and every of them be perpetually enjoined and restrained from acting in any manner whatsoever under and by virtue of the terms, provisions, and conditions of said mortgage or deed of trust made, executed, and delivered by said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and said defendant, The Farmers' Loan and Trust Company, as cotrustee.

22. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed that the 1056 said defendant, The American Trust and Savings Bank, as trustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, do, and it is hereby

ordered and directed to appoint, by an instrument in writing, within thirty days from the date of the entry hereof, a cotrustee, under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, as aforesaid, in place of the said defendant, The Farmers' Loan and Trust Company, and that upon such successor being so appointed by the defendant The American Trust and Savings Bank, as aforesaid, such successor shall, upon accepting said appointment, as aforesaid, under said mortgage or deed of trust be and become vested with all the property, rights, duties, and trusts of a trustee under said trust deed, with the like effect as if named as trustee therein, and shall likewise be vested with all right, title, and interest of said Farmers' Loan and Trust Company under said trust deed, and that the said The Farmers' Loan and Trust Company, on the written request of said new trustee so appointed, shall immediately execute an instrument of transfer to vest in such new trustee, upon the trusts in said trust deed expressed, all the property, privileges, and rights thereunder of the said The Farmers' Loan and Trust Company, and that said The Farmers' Loan and Trust Company shall duly assign, trans-
1057 fer, and deliver to such new trustee so appointed any moneys held under and by virtue of such trust deed for the further security of the bondholders, and that in case of the failure upon the part of said The Farmers' Loan and Trust Company to make, execute, and deliver the instrument as aforesaid, that A. F. Stevenson, master in chancery of this court, is authorized and directed to make, execute, and deliver on behalf of said The Farmers' Loan and Trust Company the instrument required by it to be made and delivered as aforesaid, and that such instrument or instruments when so made, executed, and delivered by such master in chancery, as aforesaid, shall have the same force and effect as though made, executed, and delivered by the said defendant, The Farmers' Loan and Trust Company."

23. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed that the said defendant, The American Trust and Savings Bank, as trustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, do, and it is hereby ordered and directed to, appoint by an instrument in writing, within thirty days from the
date of the entry hereof, a cotrustee under the said mortgage
1058 or deed of trust so made, executed, and delivered by the said complainant, as aforesaid, in place of the said defendant, The Farmers' Loan and Trust Company."

24. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed that the said

defendant, The American Trust and Savings Bank, as trustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, do, and it is hereby ordered and directed to, appoint by an instrument in writing, within thirty days from the date of the entry hereof, a cotrustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, as aforesaid, in place of the said defendant, The Farmers' Loan and Trust Company, and that upon such successor being so appointed by the said defendant, The American Trust and Savings Bank, as aforesaid, such successor shall, upon accepting said appointment, as aforesaid, under said mortgage or deed of trust, be and become vested with all of the property, rights, duties, and trusts of a trustee under said trust deed, with the like effect as if named as trustee therein, and shall likewise be vested with all the right, title,
1059 and interest of said Farmers' Loan and Trust Company under said trust deed."

25. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"That the said The Farmers' Loan and Trust Company, on the written request of said new trustee so appointed, shall immediately execute an instrument of transfer, to vest in such new trustee, upon the trusts in said trust deed expressed, all the property, privileges, and rights thereunder of the said The Farmers' Loan and Trust Company, and that said The Farmers' Loan and Trust Company shall duly assign, transfer, and deliver to such new trustee so appointed any moneys held under and by virtue of such trust deed for the further security of the bondholders."

26. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"That in case of the failure upon the part of said The Farmers' Loan and Trust Company to make, execute, and deliver the instrument, as aforesaid, that A. F. Stevenson, master in chancery of this court, is authorized and directed to make, execute, and deliver on behalf of said The Farmers' Loan and Trust Company the instrument required by it to be made and delivered, as aforesaid, and that such instrument or instruments, when so made, executed, and delivered by such master in chancery, as aforesaid, shall have the same force and effect as though made, executed, and de-
1060 livered by the said defendant, The Farmers' Loan and Trust Company."

27. The court below erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"It is further ordered, adjudged, and decreed that upon the failure of the said The American Trust and Savings Bank to make the appointment, as aforesaid, within thirty (30) days, that the court

hereby reserves the power, right, and authority to appoint a co-trustee as successor to said The Farmers' Loan and Trust Company under said trust deed."

28. The court below erred in entering said decree entered herein on said fourth (4th) day of June, A. D. 1896.

29. The court below erred in not entering a decree herein dismissing the bill of complaint herein.

30. The court below erred in not entering a decree herein dismissing without prejudice the bill of complaint herein.

31. The court below erred in finding in and by said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And the court doth further find that at the time the said mortgage or trust deed executed and delivered, as aforesaid, was so made, executed, and delivered and recorded the said defendant, The Farmers' Loan and Trust Company, being such corporation, as aforesaid, under the laws of the State of New York, had not then nor at any time prior thereto, nor has said defendant, The Farmers' Loan
1061 and Trust Company, since said time complied with the laws of the State of Illinois requiring the deposit with the auditor of public accounts of the State of Illinois of the sum of two hundred thousand dollars ($200,000) in stocks of the United States or municipal bonds of the State of Illinois or in mortgages on improved and productive real estate in the State of Illinois, being first liens thereon, said real estate being worth at least twice the amount loaned thereon."

32. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And the court doth further find that said defendant, The Farmers' Loan and Trust Company, has not deposited with the auditor of public accounts, for the benefit of the creditors of the said The Farmers' Loan and Trust Company or for any other purpose, any sum of money whatsoever, either in money, stocks, bonds, mortgages, or otherwise, but that the said defendant, The Farmers' Loan and Trust Company, has wholly failed and neglected to deposit with the said auditor of public accounts any money or property whatsoever and has wholly failed and neglected to comply with the said laws of the State of Illinois requiring a deposit to be made with the auditor of public accounts, as aforesaid."

33. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

1062 "And the court doth further find that at the time of and since the acceptance of the trust created in and by the said mortgage and trust deed so made by said complainant, The Lake Street Elevated Railroad Company, as aforesaid, by the defendant The Farmers' Loan and Trust Company, the said defendant, The Farmers' Loan and Trust Company, was and continuously has been and is now doing and carrying on business in the State of Illinois, in the acceptance and performance of the trust under the above-

recited trust deed and by the acceptance of similar trusts, except such other trusts do not provide for the appointment of an agent, and was and continuously has been doing and carrying on business in the State of Illinois without having made the said deposit, as required by the said laws of the State of Illinois, and without having made or attempted to make any deposit whatsoever, as required by the said laws of the State of Illinois."

34. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And the court doth further find that at the time of and since the acceptance of the trust created in and by the said mortgage and trust deed so made by said complainant, The Lake Street Elevated Railroad Company, as aforesaid, by the defendant The Farmers' Loan and Trust Company, the said defendant, The Farmers' Loan and Trust Company, was and continuously has been and is
1063 now doing and carrying on business in the State of Illinois, in the acceptance and performance of the trust under the above-recited trust deed and by the acceptance of similar trusts, except such other trusts do not provide for the appointment of an agent, and was and continuously has been doing and carrying on business in the State of Illinois."

35. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"That the said defendant, The Farmers' Loan and Trust Company, was and continuously has been doing and carrying on business in the State of Illinois."

36. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And the court doth further find that under and by virtue of the mortgage or deed of trust so made, executed, and delivered by said complainant, The Lake Street Elevated Railroad Company, as aforesaid, the said defendant, The Farmers' Loan and Trust Company, and the American Trust and Savings bank, did, in August, 1894, appoint one William Burry, of the city of Chicago, in the State of Illinois, as their agent to represent them under the terms, provisions, and conditions of the said mortgage or deed of trust, and that said Burry has during all of said time acted under said appointment in Illinois."

37. The court below erred in finding in and by the said
1064 decree entered herein on said fourth day of June, A. D. 1896, as follows, to wit:

"And the court doth further find that under and by virtue of the mortgage or deed of trust so made, executed, and delivered by said complainant, The Lake Street Elevated Railroad Company, as aforesaid, the said defendants, The Farmers' Loan and Trust Company and The American Trust and Savings Bank, did, in August, 1894, appoint one William Burry, of the city of Chicago, in the State of

Illinois, as their agent to represent them under the terms, provisions, and conditions of the said mortgage or deed of trust."

38. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And that said Burry has during all of said time acted under said appointment in Illinois."

39. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And the court doth further find that since the acceptance, as aforesaid, of the trust created in and by the said mortgage or deed of trust by the said defendant, The Farmers' Loan and Trust Company, as aforesaid, the said defendant, The Farmers Loan and Trust Company, has continuously transacted and carried on business in the city of Chicago, in the county of Cook and State of Illi-
1065 nois, in connection with the trusts in said mortgage or deed of trust created, and that the said defendant, The Farmers' Loan and Trust Company, during all that time claimed and is now claiming the right and authority (to) do business and to carry out and execute the trust assumed by it, the said The Farmers' Loan and Trust Company, under the terms, provisions, and conditions of said mortgage or deed of trust."

40. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And the court doth further find that since the acceptance, as aforesaid, of the trust created in and by the said mortgage or deed of trust by the said defendant, The Farmers' Loan and Trust Company, as aforesaid, the said defendant, The Farmers' Loan and Trust Company, has continuously transacted and carried on business in the city of Chicago, in the county of Cook and State of Illinois"

41. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"That the said defendant, The Farmers' Loan and Trust Company, during all that time claimed and is now claiming the right and authority (to) do business and to carry out and execute the trust assumed by it, the said The Farmers' Loan and Trust Company, under the terms, provisions, and conditions of said mortgage or deed of trust."

1066 42. The court below erred in finding in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And that the said defendant, The Farmers' Loan and Trust Company, during all that time claimed and is now claiming the right and authority (to) do business."

43. The court below erred in finding in and by said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And the court doth further find that notwithstanding that no

other person or persons, firm, or corporation, other than the said William Ziegler and others, representing about 610 of said bonds, as aforesaid, has or had asked or demanded or made any request of said defendants, The American Trust and Savings Bank, trustee, and The Farmers' Loan and Trust Company, cotrustee, to take any action or proceeding under or by virtue of said mortgage or deed of trust, or to foreclose the said mortgage or deed of trust, or take possession of said railroad of said complainant under or by virtue of said mortgage or deed of trust, nevertheless the said defendant, The Farmers' Loan and Trust Company, did improperly, under and by virtue of said mortgage or deed of trust, as aforesaid, file a bill in chancery to foreclose the said mortgage or deed of trust so made, executed, and delivered by the said complainant, as aforesaid, for and on the ground of the alleged failure of the said com-
1067 plainant to pay the interest upon the bonds secured by said mortgage or deed of trust aforesaid."

44. The court below erred in finding in and by said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"The said defendant, The Farmers' Loan and Trust Company, did improperly under and by virtue of said mortgage or deed of trust, as aforesaid, file a bill in chancery to foreclose the said mortgage or deed of trust, so made, executed, and delivered by the said complainant, as aforesaid, for and on the ground of the alleged failure of the said complainant to pay the interest upon the bonds secured by said mortgage or deed of trust aforesaid."

45. The court below erred in finding in and by said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And the court doth further find that, in accordance with such request, the said defendant, The American Trust and Savings Bank, as trustee under said mortgage or deed of trust, did make a full and careful examination of the affairs of the said complainant, The Lake Street Elevated Railroad Company, and did, as such trustee, as the result of such investigation, on the 28th day of January, 1896, properly decline and refuse to join with the said defendant, The Farmers' Loan and Trust Company, as cotrustee, in any proceeding whatever to enforce the terms, provisions, or
1068 conditions of said mortgage or deed of trust, because said The American Trust and Savings Bank, in the proper exercise of its discretion, was of the opinion that no such proceeding should be had or instituted."

46. The court below erred in finding in and by said decree entered herein on said fourth (4th) day of June, A. D. 1896, that the said defendant, The American Trust and Savings Bank, did "properly decline and refuse to join with the said defendant, The Farmers' Loan and Trust Company, in any proceeding to enforce the terms, provisions, or conditions of said mortgage or deed of trust."

47. The court below erred in making each and every one of the findings of fact contained in said decree entered herein on the fourth (4th) day of June, A. D. 1896.

48. The court below erred in making each and every one of the findings of law contained in said decree entered herein on said fourth (4th) day of June, A. D. 1896.

49. The court below erred in making each and every one of the findings of fact and of law contained in said decree entered herein on said fourth (4th) day of June, A. D. 1896.

50. The court below erred in not finding and adjudging that the holders of the bonds secured by said mortgage or deed of trust were necessary parties to this cause.

51. The court below erred in not finding and adjudging that the holders of the bonds secured by said mortgage or deed of trust, other than said Northern Trust Company, were necessary parties to this cause.

1069 52. The court below erred in entering said decree (entered herein on the fourth (4th) day of June, A. D. 1896) without requiring that the bondholders secured by said mortgage or deed of trust be made parties to the suit.

53. The court below erred in entering said decree entered herein on the fourth (4th) day of June, A. D. 1896, without requiring that some or all of the holders of bonds secured by said mortgage or deed of trust, other than said Northern Trust Company, be made parties to the suit.

By reason whereof the said The Farmers' Loan and Trust Company, the appellant herein, prays that the said decree may be reversed, etc.

RUNNELLS & BURRY AND
HERRICK, ALLEN, BOYESON & MARTIN,
Solicitors for said Appellant, The Farmers' Loan and Trust Company.

In the Appellate Court, First District, Illinois.

FARMERS' LOAN & TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD COMPANY. } No. 6795. Appeal Cook Superior.

I, Thomas N. Jamieson, clerk of the appellate court within and for the first district of Illinois, hereby certify that the transcript of record hereto attached and marked "A" is the original transcript of record filed in said appellate court on the 7th day of October, A. D. 1896, by said appellant.

1070 In testimony whereof I have hereunto set my hand and seal of said court, at Chicago, this 25th day of February, A. D. 1897.

THOMAS N. JAMIESON,
Clerk of the Appellate Court, First District, Illinois.

1071 At a term of the appellate court begun and held at Chicago on Tuesday, the sixth day of October, in the year of our Lord one thousand eight hundred and ninety-six, within and for the first district of the State of Illinois.

Present: Hon. Henry M. Shepard, presiding justice.
" " Arba N. Waterman, justice.
" " Joseph E. Gary, justice.
Thomas G. McElligott, clerk.
James Pease, sheriff.

THE FARMERS' LOAN AND TRUST COMPANY, a Corporation, Appellant,
vs.
THE LAKE STREET ELEVATED RAILROAD Company, Appellee.
} No. 6795. Appeal Cook Superior.

Be it remembered that on the 30th day of November, A. D. 1896, it being one of the days of said October term, A. D. 1896, certain proceedings were had in said court and entered of record in words and figures following, to wit:

1072 FARMERS' LOAN AND TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD COMPANY.
} 6795. Appeal Superior.

This day came appellee, by its counsel, and moved the court to dismiss the appeal in said cause, and the court, being fully advised in the premises, doth order that said motion be, and the same is hereby, reserved to the final hearing of said cause.

And afterwards, on the 14th day of December, A. D. 1896, the following proceedings were had and entered of record in said cause, to wit:

FARMERS' LOAN AND TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD COMPANY.
} 6795. Appeal Superior.

This day came appellant, by its counsel, and moved the court to extend the time to December 26, A. D. 1896, in which to file its abstracts of record and brief in said cause, and that appellee's time be extended 20 days thereafter, as per stipulation filed herein, and the court, being fully advised in the premises, doth order that said time be, and the same is hereby, extended.

1073 And afterwards, on the 24th day of December, A. D. 1896, the following proceedings were had and entered of record in said cause, to wit:

FARMERS' LOAN AND TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD COMPANY.
} 6795. Appeal Superior.

This day came appellant, by its counsel, and moved the court to extend the time to 10 o'clock a. m. December 30th, 1896, in which to file its abstracts of record and brief in said cause, to wit:

FARMERS' LOAN AND TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD COMPANY.
} No. 6795. Appeal from Cook Superior.

This cause, having this day been reached in the call of the docket, was argued by counsel for appellee, and the court, not being fully advised in the premises, doth order that said cause be taken under advisement on briefs filed and to be filed.

1074 And afterwards, on the 9th day of February, A. D. 1897, the following proceedings were had and entered of record in said cause, to wit:

THE FARMERS' LOAN AND TRUST COMPANY, a Corporation, Appellant,
vs.
THE LAKE STREET ELEVATED RAILROAD COMPANY, Appellee.
} No. 6795. Appeal from Cook Superior.

On this day come again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the decree aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error, therefore it is considered by the court that the decree aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellee recover of and from the said appellant its costs by it in this behalf expended, to be taxed, and that it have execution therefor.

1075 And afterwards, on the 9th day of February, A. D. 1897, the following proceedings were had and entered of record in said cause, to wit:

FARMERS' LOAN AND TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD CO.
} No. 6795. Appeal from Cook Superior.

This day came appellant, by its counsel, and moved the court for an appeal from the order and judgment of this court in said cause to the supreme court of Illinois, and the court, being fully advised in the premises, doth order that an appeal be allowed herein to the northern grand division of said supreme court, on condition that said appellant doth within twenty days from this date execute and file in said cause a good and sufficient appeal bond, conditioned according to law, in the penal sum of twenty-five hundred dollars, with surety thereto, to be approved by the court.

And afterwards, in vacation after the October term, A. D. 1896, on the 23rd day of February, A. D. 1897, the following proceedings were had and entered of record in said cause, to wit:

FARMERS' LOAN AND TRUST COMPANY *vs.* LAKE STREET ELEVATED RAILROAD COMPANY.	No. 6795. Appeal from Cook Superior.

This day came appellant, by its counsel, and presented its
1076 certain appeal bond in said cause in the penal sum of twenty-five hundred dollars, with I. K. Boyesen as surety thereto, and the court, being fully satisfied as to the qualifications of said surety, doth order that said appeal bond be, and the same is hereby, taken, approved, and filed herein.

And afterwards, in vacation after the October term, A. D. 1896, on the same day, to wit, the 23rd day of February, A. D. 1897, an appeal bond was filed in said cause; which said bond is in the words and figures following, to wit:

Know all men by these presents that we, the Farmers' Loan and Trust Company, a corporation organized under the laws of the State of New York, as principal, and I. K. Boyeson, of Chicago, Illinois, as surety, are held and firmly bound unto the Lake Street Elevated Railroad Company of Chicago, Illinois, in the penal sum of twenty-five hundred dollars ($2,500), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly, severally, and firmly by these presents.

Witness our hands and seals this 18th day of February, A. D. 1897.

1077 The condition of the above obligation is such that whereas the said The Lake Street Elevated Railroad Company did, on the 14th day of June, A. D. 1896, in the superior court of Cook county, in the State of Illinois, obtain a decree against the said Farmers' Loan and Trust Company prayed for and obtained and appeal to the appellate court within and for the first district of Illinois; and whereas the said appellate court did, on the 9th day of February, A. D. 1897, at the October term, A. D. 1896, thereof, affirm the decree of the superior court aforesaid and rendered judgment against the above-bounden The Farmers' Loan & Trust Company for costs of suit; from which order of affirmance and judgment of the said appellate court the said Farmers' Loan and Trust Company has prayed for and obtained an appeal to the supreme court of Illinois:

Now, therefore, if the said The Farmers' Loan and Trust Company shall duly prosecute its said appeal with effect, and, moreover, pay the costs and damages rendered and to be rendered against it in case the said decree and judgment of the appellate court shall be

affirmed in said supreme court, then the above obligation to be void; otherwise to remain in full force and virtue.

THE FARMERS' LOAN AND TRUST COMPANY,

[SEAL.] By R. G. ROLSTON, *President.*

Attest: E. S. MARSTON, *Secretary.*

INGOLF K. BOYESEN. [SEAL.]

1078 STATE OF NEW YORK, } ss:
County of New York, }

I, William B. Cardozo, a notary public of the State of New York in and for the county of New York, do hereby certify that Roswell G. Rolston, president of the above-named The Farmers' Loan and Trust Company, known to me to be the same person whose name is subscribed to the foregoing instrument as such president, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument as the free and voluntary act of the said Farmers' Loan and Trust Company and as his own free and voluntary act as such president for the uses and purposes therein set forth.

Given under my hand and official seal this 18th day of February, 1897.

W. B. CARDOZO,

[SEAL.] *Notary Public No.* 18, *New York County.*

I, Thomas N. Jamieson, clerk of the appellate court in and for the district of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order and judgment and all other proceedings and appeal bond of the said appellate court in the above-entitled cause of record in my office.

1079 In testimony whereof I have set my hand and affixed the seal of the said appellate court, at Chicago, this 25th day of February, in the year of our Lord one thousand eight hundred and ninety-seven.

[COURT SEAL.] THOMAS N. JAMIESON,
Clerk of the Appellate Court of the First District.

1080 In the Supreme Court of Illinois, Northern Grand Division, March Term, A. D. 1897.

THE FARMERS' LOAN AND TRUST COMPANY, Appellant,
vs.
THE LAKE STREET ELEVATED RAILROAD Company, The American Trust and Savings Bank, and The Northern Trust Company, Appellees.
} Appeal from Appellate Court, First District.

Assignment of Errors.

And now comes the said The Farmers' Loan and Trust Company, the appellant herein, by Runnells & Burry and Herrick, Allen,

Boyesen & Martin, its solicitors, and says that in the record and proceedings herein and in rendering the judgment herein there is manifest error, in this, to wit:

1081 1. The said appellate court in and for the first district of Illinois erred in affirming the decree herein of the superior court of Cook county.

2. The said appellate court erred in not reversing the decree herein of said superior court of Cook county.

3. The said appellate court erred in not reversing the decree herein of said superior court of Cook county and in not remanding the case to said superior court.

4. The said appellate court erred in not reversing the said decree of said superior court and in not remanding the cause to said superior court with directions to dismiss the bill of complaint herein.

5. The judgment of said appellate court affirming said decree of said superior court is void for want of jurisdiction.

6. The said appellate court erred in not holding that the superior court of Cook county erred in entering herein, on the third (3rd) day of February, 1896, the order of that date set out in the transcript of record herein, and in not reversing the cause on account of said error of said superior court.

7. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, in and by said order entered herein on the third (3rd) day of February, 1896, that

1082 the motion, with petition and bond for the removal of this cause to the United States circuit court, be denied, and in not reversing the cause on account of said error of said superior court.

8. The said appellate court erred in not holding that the superior court of Cook county erred in denying the petition of the appellant, The Farmers' Loan and Trust Company, for the removal of this cause to the United States circuit court, and in not reversing the cause on account of said error of said superior court.

9. The said appellate court erred in not holding that the superior court of Cook county erred in not accepting the petition and bond for removal to the United States circuit court filed herein by appellant, The Farmers' Loan and Trust Company, and in not ordering the removal of the case to said United States circuit court, and in not reversing the cause on account of said error of said superior court.

10. The said appellate court erred in not holding that the superior court of Cook county erred in retaining jurisdiction of this cause after the filing herein and presentation to said court of said petition and bond for removal to the United States circuit court by appellant, The Farmers' Loan and Trust Company, and in not reversing the cause on account of said error of said superior court.

11. The said appellate court erred in not holding that the superior court of Cook county erred in taking proceedings in this

1083 cause after the filing herein and presentation to said court of said petition and bond for removal to the United States circuit court by appellant, The Farmers' Loan and Trust Company,

and in not reversing the cause on account of said error of said superior court.

12. The said appellate court erred in not holding that the superior court of Cook county erred in entering the said decree of June 4, 1896, herein after the filing herein and presentation to said court of said petition and bond for removal to the United States circuit court by appellant, The Farmers' Loan and Trust Company, and in not reversing the cause on account of said error of said superior court.

13. The said appellate court erred in not holding that the superior court of Cook county erred in entering herein, on the 18th day of March, A. D. 1896, the order of that date set forth in the transcript herein, and in not reversing the cause on account of said error of said superior court.

14. The said appellate court erred in not holding that the superior court of Cook county erred in finding in and by said order entered herein on said 18th day of March, A. D. 1896, that it had jurisdiction of the parties and the subject-matter of this cause, and in not reversing the cause on account of said error of said superior court.

15. The said appellate court erred in not holding that the said decree entered herein by the superior court of Cook county on the fourth (4th) day of June, A. D. 1896, is void for want of juris-
1084 diction, and in not reversing the cause on account of said error of said superior court.

16. The said appellate court erred in not holding that the superior court of Cook county erred in finding and adjudging in and by said decree entered herein on the fourth (4th) day of June, A. D. 1896, that it had jurisdiction of the cause and of all the parties hereto, and in not reversing the cause of account of said error of said superior court.

17. The said appellate court erred in not holding that the superior court of Cook county erred in proceeding in this cause and in entering herein said decree (entered herein on the fourth (4th) day of June, A. D. 1896) after the docketing of the cause in the said United States circuit court, and the motions to remand the same made in said United States circuit court by said complainant, The Lake Street Elevated Railroad Company, and by the defendants The American Trust and Savings Bank and The Northern Trust Company respectively, and the order of said United States circuit court denying said motions to remand, and the other proceedings in said United States circuit court shown in evidence on the hearing of this cause in the court below, and in not reversing the cause on account of said error of said superior court.

18. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"It is therefore ordered, adjudged, and decreed by the court
1085 that the said defendant, The Farmers' Loan and Trust Company, be, and the same is hereby, removed as trustee or cotrustee under the said mortgage or deed of trust made, executed, and de-

livered by said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, which said mortgage or deed of trust is dated the seventh (7th) day of April, A. D. 1893, and was duly filed for record in the office of the recorder of deeds of the county of Cook, in the State of Illinois, on the 6th day of May, A. D. 1893, and there recorded in Book 4256 of Records, at page 230, and which was afterwards and on the 11th day of May, 1893, duly filed in the office of the secretary of state of the State of Illinois, and there recorded in Book 12, at page 266," and in not reversing the cause on account of said error of said superior court.

19. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree entered herein on the said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"It is therefore ordered, adjudged, and decreed by the court that the said defendant, The Farmers' Loan and Trust Company, be, and it is hereby, removed as trustee or cotrustee under the said mortgage or deed of trust made, executed, and delivered by
1086 said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee," and in not reversing the cause on account of said error of said superior court.

20. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed by the court that the said defendant, The Farmers' Loan and Trust Company, and its attorneys, solicitors, officers, agents, and servants, and each and every of them, be, and they are hereby, perpetually enjoined and restrained from taking any proceedings or bringing or prosecuting any suit or suits to foreclose said mortgage or trust deed from said complainant to said American Trust and Savings bank and said Farmers' Loan and Trust Company, or acting in any manner whatsoever under and by virtue of the terms, provisions, and conditions of said mortgage or deed of trust so made, executed, and delivered by the said complainant, The Lake Street Elevated Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee," and in not reversing the cause on account of said error of said superior court.

21. The said appellate court erred in not holding that the
1087 superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed by the court that the said defendant, The Farmers' Loan and Trust Company, and its attorneys, solicitors, officers, agents, and servants, and each

and every of them, be, and they are hereby, perpetually enjoined and restrained from taking any proceedings or bringing or prosecuting any suit or suits to foreclose said mortgage or trust deed from said complainant to said American Trust and Savings bank and said Farmers' Loan and Trust Company," and in not reversing the cause on account of said error of said superior court.

22. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, that the said defendant, The Farmers' Loan and Trust Company, and its attorneys, solicitors, officers, agents, and servants, and each and every of them, be perpetually enjoined and restrained from acting in any manner whatsoever under and by virtue of the terms, provisions, and conditions of said mortgage or deed of trust made, executed, and delivered by said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and said defendant, The Farmers' Loan and Trust Company, as cotrustee, and
1088 in not reversing the cause on account of said error of said superior court.

23. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed that the said defendant, The American Trust and Savings Bank, as trustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, do, and it is hereby ordered and directed to, appoint by an instrument in writing, within thirty days from the date of the entry hereof, a cotrustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, as aforesaid, in place of the said defendant, The Farmers' Loan and Trust Company, and that upon such successor being so appointed by the defendant The American Trust and Savings Bank, as aforesaid, such successor shall, upon accepting said appointment, as aforesaid, under said mortgage or deed of trust, be and become vested with all the property, rights, duties, and trust of a trustee under said trust deed, with the like effect as if named as trustee therein, and
shall likewise be vested with all right, title, and interest of said
1089 Farmers' Loan and Trust Company under said trust deed, and that the said The Farmers' Loan and Trust Company, on the written request of said new trustee so appointed, shall immediately execute an instrument of transfer, to vest in such new trustee, upon the trusts in said trust deed expressed, all the property, privileges, and rights thereunder of the said The Farmers' Loan and Trust Company, and that said The Farmers' Loan and Trust Company shall duly assign, transfer, and deliver to such new trustee so appointed any moneys held under and by virtue of such

trust deed for the further security of the bondholders, and that in case of the failure upon the part of said The Farmers' Loan and Trust Company to make, execute, and deliver the instrument, as aforesaid, that A. F. Stevenson, master in chancery of this court, is authorized and directed to make, execute, and deliver on behalf of said The Farmers' Loan and Trust Company the instrument required by it to be made and delivered, as aforesaid, and that such instrument or instruments, when so made, executed, and delivered by such master in chancery, as aforesaid, shall have the same force and effect as though made, executed, and delivered by the said defendant, The Farmers' Loan and Trust Company," and in not reversing the cause on account of said error of said superior court.

24. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, adjudging, and decree-
1090 ing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed that the said defendant, The American Trust and Savings Bank, as trustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee, do, and it is hereby ordered and directed to, appoint by an instrument in writing, within thirty days from the date of the entry hereof, a cotrustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, as aforesaid, in place of the said defendant, The Farmers' Loan and Trust Company," and in not reversing the cause on account of said error of said superior court.

25. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed that the said defendant, The American Trust and Savings Bank, as trustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, The Lake Street Elevated Railroad Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and
1091 Trust Company, as cotrustee, do, and it is hereby ordered and directed to appoint, by an instrument in writing, within thirty days from the date of the entry hereof, a cotrustee under the said mortgage or deed of trust so made, executed, and delivered by the said complainant, as aforesaid, in place of the said defendant, The Farmers' Loan and Trust Company, and that upon such successor being so appointed by the said defendant, The American Trust and Savings Bank, as aforesaid, such successor shall, upon accepting said appointment as aforesaid under said mortgage or deed of trust, be and become vested with all of the property, rights,

duties, and trusts of a trustee under said trust deed with the like effect as if named as trustee therein, and shall likewise be vested with all the right, title, and interest of said Farmers' Loan and Trust Company under said trust deed," and in not reversing the cause on account of said error of said superior court.

26. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"That the said The Farmers' Loan and Trust Company, on the written request of said new trustee so appointed, shall immediately execute an instrument of transfer to vest in such new trustee upon the trusts in said trust deed expressed all the property, priv-
1092 ileges, and rights thereunder of the said The Farmers' Loan and Trust Company, and that said The Farmers' Loan and Trust Company shall duly assign, transfer, and deliver to such new trustee so appointed any moneys held under and by virtue of such trust deed for the further security of the bondholders," and in not reversing the cause on account of said error of said superior court.

27. The said appellate court erred in not holding that the superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"That in case of the failure upon the part of said The Farmers' Loan and Trust Company to make, execute, and deliver the instrument, as aforesaid, that A. F. Stevenson, master in chancery of this court, is authorized and directed to make, execute, and deliver, on behalf of said The Farmers' Loan and Trust Company, the instrument required by it to be made and delivered, as aforesaid, and that such instrument or instruments when so made, executed, and delivered by such master in chancery, as aforesaid, shall have the same force and effect as though made, executed, and delivered by the said defendant, The Farmers' Loan and Trust Company," and in not reversing the cause on account of said error of said superior court.

28. The said appellate court erred in not holding that the
1093 superior court of Cook county erred in ordering, adjudging, and decreeing in and by the said decree entered herein on said fourth (4th) day of June, A. D. 1896, as follows, to wit:

"It is further ordered, adjudged, and decreed that upon the failure of the said The American Trust and Savings Bank to make the appointment, as aforesaid, within thirty (30) days, that the court hereby reserves the power, right, and authority to appoint a co-trustee as successor to said The Farmers' Loan and Trust Company under said trust deed," and in not reversing the cause on account of said error of said superior court.

29. The said appellate court erred in not holding that the superior court of Cook county erred in entering said decree entered

herein on said fourth (4th) day of June, A. D. 1896, and in not reversing the cause on account of said error of said superior court.

30. The said appellate court erred in not holding that the superior court of Cook county erred in not entering a decree herein dismissing the bill of complaint herein, and in not reversing the cause on account of said error of said superior court.

31. The said appellate court erred in not holding that the superior court of Cook county erred in not entering a decree herein dismissing without prejudice the bill of complaint herein, and in not reversing the cause on account of said error of said superior court.

1094 32. The said appellate court erred in not holding that the superior court of Cook county erred in making each and every one of the findings of fact contained in said decree entered herein on the fourth (4th) day of June, A. D. 1896, and in not reversing the cause on account of said error of said superior court.

33. The said appellate court erred in not holding that the superior court of Cook county erred in making each and every one of the findings of law contained in said decree entered herein on said fourth (4th) day of June, A. D. 1896, and in not reversing the cause on account of said error of said superior court.

34. The said appellate court erred in not holding that the superior court of Cook county erred in not finding and adjudging that the holders of the bonds secured by said mortgage or deed of trust were necessary parties to this cause, and in not reversing the cause on account of said error of said superior court.

35. The said appellate court erred in not holding that the superior court of Cook county erred in not finding and adjudging that the holders of the bonds secured by said mortgage or deed of trust other than said Northern Trust Company were necessary parties to this cause, and in not reversing the cause on account of said error of said superior court.

1095 36. The said appellate court erred in not holding that the superior court of Cook county erred in entering said decree (entered herein on the fourth (4th) day of June, A. D. 1896), without requiring that the bondholders secured by said mortgage or deed of trust be made parties to the suit, and in not reversing the cause on account of said error of said superior court.

37. The said appellate court erred in not holding that the superior court of Cook county erred in entering said decree entered herein on the fourth (4th) day of June, A. D. 1896, without requiring that some or all of the holders of bonds secured by said mortgage or deed of trust other than said Northern Trust Company be made parties to the suit, and in not reversing the cause on account of said error of said superior court.

1096 Wherefore, and for divers other errors appearing in this record, said The Farmers' Loan and Trust Company, the appel-ant, prays that the judgment entered in said cause by said

appellate court may be reversed, set aside, annulled, and held for naught.

THE FARMERS' LOAN & TRUST COMPANY, *Appellant*,
By RUNNELLS & BURRY AND
HERRICK, ALLEN, BOYESEN & MARTIN,
Its Solicitors.

RUNNELLS & BURRY &
HERRICK, ALLEN, BOYESEN & MARTIN,
Solicitors for said The Farmers' Loan and Trust Company, Appellant.

1097 And afterwards, to wit, on the 4th day of March, certain proceedings were had and entered of record, among which are the following:

FARMERS' LOAN AND TRUST COMPANY *vs.* LAKE STREET ELEVATED RAILROAD COMPANY. } No. 222. Appeal from First District.

And now, on this day, comes the said appellant, by Herrick, Allen and Boyeson, its attorneys, and moves the court for an extension of time for which to file briefs, which motion is by the court taken under advisement.

And afterwards, to wit, on the 6th day of March, certain proceedings were had and orders made and entered of record in said court, among which is the following:

FARMERS' LOAN AND TRUST COMPANY *vs.* LAKE STREET ELEVATED RAILROAD COMPANY. } No. 222. Appeal from First District.

1098 And now, on this day, the court having duly considered the motion of appellant for extension of time to file briefs, and being fully advised in the premises, it is ordered that time of filing briefs herein be extended five days.

And afterwards, to wit, on the 9th day of March, certain proceedings were had and orders made and entered of record in said court, among which is the following:

FARMERS' LOAN AND TRUST COMPANY *vs.* LAKE STREET ELEVATED RAILROAD COMPANY. } No. 222. Appeal from First District.

And now, on this day, come the appellees, by Knight & Brown, their attorneys, and move the court to dismiss the appeal herein, and the court, not being sufficiently advised in the premises, orders that said motion to dismiss be reserved for the final hearing.

And afterwards, to wit, on March 16th, certain proceedings were had in said court, among which was the following:

1099 FARMERS' LOAN AND TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD Company.
No. 222. Appeal from First District.

And now, on this day, comes the said appellant, by Herrick, Allen & Boyeson, its attorneys, and move- the court for an extension of time until March 22, in which to file reply briefs herein, and the court, being fully advised in the premises, grant- such motion, and time to file reply briefs is hereby extended to the 22nd of March.

1100 And afterwards, to wit, on the 30th day of March, certain proceedings were had and orders made and entered of record in said court, among which is the following:

FARMERS' LOAN AND TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILROAD Company.
No. 222. Appeal from First District.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court—

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

1101 At a supreme court, begun and held at Springfield on Tuesday, the seventh day of June, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the eighteenth day of June, A. D. 1898, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

THE FARMERS' LOAN AND TRUST COMPANY
v.
THE LAKE STREET ELEVATED RAILROAD Company, The American Trust and Savings Bank, The Northern Trust Company.

No. 4516. 46, A. D. Appeal from Appellate Court of Illinois, First District.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error, therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellees recover of and from the said appellant their costs by them in this behalf expended, and that they have execution therefor.

1102 At a supreme court, begun and held at Springfield on Tuesday, the seventh day of June, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the eighteenth day of June, 1898, the opinion of the court was filed in the words and figures following, to wit:

FARMERS' LOAN & TRUST COMPANY
vs.
LAKE STREET ELEVATED RAILWAY COMPANY.

No. 46. Error to —. Appeal from First District.

1103 Docket No. 222. Agenda 195. Northern Div. Mar., '97.

FARMERS' LOAN AND TRUST CO.
v.
LAKE ST. EL. R. R. CO. ET AL.

This is an appeal from a judgment of the appellate court, affirming a decree of the superior court of Cook county, removing appellant as trustee under a deed of trust made by the appellee, The Lake Street Elevated Railroad Company, to appellant, The Farmers' Loan and Trust Company, and to appellee, The American Trust

and Savings Bank, as trustees, and enjoining appellant from taking any steps to foreclose, or otherwise act as trustee under, the trust deed.

The bill was filed by the appellee, The Lake Street Elevated Railroad Company, on January 30, 1896, and made appellant, The Farmers' Loan and Trust Company, and the appellees, The American Trust and Savings Bank and The Northern Trust Company, defendants. The bill alleges that, on the 7th day of April, 1893, the complainant therein, The Lake Street Elevated Railroad Company, made a mortgage, or trust deed, to the defendants, The American Trust and Savings Bank and The Farmers' Loan and Trust Company, as trustees; that the trust was accepted in writing by the trustees, and that the mortgage or deed of trust was duly recorded on May 16, 1893. A copy of the mortgage was made an exhibit to the bill.

The bill further sets forth the incorporation of the railroad company under the laws of Illinois for the purpose of constructing railways, etc., with a capital stock of $5,000,000.00, divided into 50,000 shares of $100.00 each; that in April, 1893, its capital stock was duly increased to $10,000,000.00 and consisted of 100,000 shares of $100.00 each; that the Farmers' Loan and Trust Company was a corporation organized under the laws of New York, and had not, prior to the making of the trust deed, nor since, complied with the laws of Illinois requiring a deposit with the auditor of public accounts of $200,000.00 in stocks of the United States, or municipal bonds of this State, or in mortgages on improved or productive real estate in Illinois, being first liens thereon, and the real estate being worth at least twice the amount loaned thereon; that the railroad company did not know that the Farmers' Company had not complied with the laws of Illinois as to making said deposit, and that the Farmers' Company was doing business in Illinois without having
1104 made the deposit; that the Farmers' Company had appointed an agent to represent the company to enforce, on the part of the railroad company, a compliance with the trust reposed in the Farmers' Company under the trust deed; that, under the trust deed, there were certified and delivered by the trust companies the 6,500 bonds referred to therein; that, after the 6,500 bonds had been certified to, additional bonds were issued, which were also certified to by the trust companies and disposed of under the direction of the agent for the Farmers' Company; that, since the acceptance of the trust, the Farmers' Company has transacted and done business through its said agent, in connection with the trust under the trust deed, and was still claiming the right to do business by the execution of the trust assumed by it; that, since the making of the trust deed, the railroad company had built, and was then operating, a railroad in the city of Chicago for the carrying of passengers within said city; that it had been unable to earn sufficient money to pay the interest on its bonded indebtedness; that one William Ziegler, of New York city, conspiring with persons representing 610 bonds of the total issue of 7,574 bonds of $1,000.00 each, had made a demand upon the trust companies that they proceed to foreclose and

take possession of the railroad under the power in the trust deed; that a bill was filed in the circuit court of Cook county against Ziegler *et al.*, in which an injunction was issued, enjoining them and the trustees from foreclosing the mortgage upon the demand of Ziegler *et al.*, representing 605 of the 610 bonds; that the railroad company was informed by said agent of the Farmers' Company on January 28, 1896, that no other demand had been made upon the trustees, except that made by Ziegler and his associates, but that, although no other person was asking the Farmers' Company to take any action, they filed a bill to foreclose the mortgage for failure to pay the interest upon the bonded indebtedness; that said interest was paid up to January 1, 1895; that the Farmers' Company, in violation of its duty, and in order to injure and destroy the property and assets of the railroad company, intended to take possession of the property of the railroad company, or attempt to foreclose the trust deed, for a failure to pay the interest falling due on July 1, 1895, and January 1, 1896; that the holders of 6,574 of the bonds had requested the trustees to take no action
1105 with reference to the failure of the company to pay the coupons due July 1, 1895, and January 1, 1896: that the American Trust and Savings bank, on January 28, 1896, refused to join the Farmers' Company to enforce the trust deed on account of such failure; that the holders of over 6,500 of the bonds, issued under the trust deed, desired that the Farmers' Company should be removed from its position as trustee for failure to comply with the law of Illinois, requiring said deposit with the auditor of public accounts, and for assuming to take proceedings under the trust deed contrary to the request of the holders of a majority of the bonds issued under the trust deed.

The bill prays that a new trustee may be appointed by the court under the trust deed in place of the Farmers' Company; that an injunction be issued enjoining the Farmers' Company from taking any proceedings under the deed of trust, and for such other, and different relief, as equity may require.

An injunction was granted and served on the agent of the Farmers' Company at 11.10 a. m., January 30, 1896; summons was served on said agent on February 6, 1896. On January 31, 1896, the Farmers' Company filed a petition and bond in the superior court for the removal of the cause to the United States court. The petition was signed by the Farmers' Loan and Trust Company by its solicitors. The bond, filed with the petition for removal, was executed only by William Burry and Rockwell King, as obligors, and was in the penal sum of $500.00. On February 3, 1896, the superior court denied the motion to remove the cause to the Federal court, and exception was taken thereto by the Farmers' Company.

On March 17, 1896, the Northern Trust Company filed its answer, stating that it was informed, that the Farmers' Company had not complied with the laws of Illinois in relation to trust companies, and that, in its belief, the Farmers' Company had been doing business in Illinois, without having made the deposits aforesaid; the answer admits substantially the allegations of the bill as made

therein, and also sets forth, that the Northern Trust Company is the holder of 6,592 of said bonds, and has not made any demand on either of said trustees to foreclose said trust deed.

On March 18, 1896, the American Trust and Savings Bank filed its answer.

1106 On March 25, 1896, the Farmers' Loan and Trust Company filed its answer, denying substantially all the material allegations of the bill.

On June 4, 1896, a final decree was entered by the superior court, finding that the allegations of the bill, as herein set forth, were true, further finding that the bill in case was filed at 10.35 o'clock on January 30, 1896, and that, within ten minutes after said filing, a subpœna was issued and delivered to the solicitor of the Farmers' Company, and by him delivered to the United States marshal on February 18, 1896, and served on that date; further finding, that the holders of 6,574 of the bonds specially requested the American Trust and Savings bank and the Farmers' Loan and Trust Company to take no action whatever under the trust deed; the decree also ordered that the Farmers' Company should be removed as trustee or cotrustee under the deed of trust, and be enjoined from prosecuting any suit to foreclose said trust deed, and that the American Trust and Savings bank should, by an instrument in writing, appoint a cotrustee in place of the Farmers' Company, and that the Farmers' Company should execute an instrument of transfer to such new trustee of all its rights and powers, etc., and in case of failure of the Farmers' Company to execute such instrument, that a master in chancery should do so, and that, upon the failure of the American Trust and Savings bank to make the appointment within thirty days, the court thereby reserved the power to appoint a cotrustee.

Mr. Justice MAGRUDER delivered the opinion of the court:

First. It is claimed, on the part of the appellant, that the trial court erred in retaining jurisdiction of the cause after the filing of the petition and bond for its removal to the United States court. There was no error in this action of the trial court. The petition for the removal was signed by the appellant, The Farmers' Loan and Trust Company, one of the defendants in the court below; but the bond filed with such petition for removal was not signed by the appellant. This condition of the bond justified the court in denying the motion for the removal of the cause.

In *Weed Sewing Machine Co. v. Smith*, 71 Ill., 204, we said (p. 207):

"We think it a reasonable construction of the act (of Con-
1107 gress) to hold that it was the duty of the petitioner to present a bond signed by itself, and sureties proven to the court to be sufficient. The petitioner filed a bond not executed by itself, but signed by George S. Thomas and A. S. Alexander, as principals, and certain other parties as sureties. No proof was offered as to the solvency of those who had executed the instrument as sureties, and no explanation given why the petitioner did not sign the bond, or why strangers to the record were filing a bond instead of the de-

fendant in the cause. This cannot be regarded as even a substantial compliance with the act of Congress." As, in the *Weed Sewing Machine Co. case*, the bond was signed by persons not parties to the record, so, here, the bond was signed by Burry and King, neither of whom was a party to the record. The case of *Weed Sewing Machine Co. v. Smith, supra*, was approved in *Cleveland, Cincinnati, Chicago and St. Louis Railway Co. v. Monaghan*, 140 Ill., 474, where the act of Congress was referred to, which provides that the petitioner "may make and file a petition," etc., and requires that he "shall make and file therewith a bond with good and sufficient surety," etc., and where we said: "The third objection was that the bond filed was not the bond of the defendant. Upon hearing and argument the court held the objections to be good, and we think that its ruling was correct upon the authority of the case of *Weed Sewing Machine Co. v. Smith*, 71 Ill., 204." This disposes of the first error assigned by the appellant, which we deem it necessary to notice.

Second. It is further claimed by the appellant, that the court below erred in decreeing that the appellant be removed as trustee. Whether or not the decree was correct in ordering such removal depends upon the solution of the question, whether the appellant was bound to comply with the requirements of the act of 1887, as amended in 1889, regulating trust companies. Section 1 of said act, as amended, provides that "any corporation which has or shall be incorporated under the general incorporation laws of this State, being an act entitled 'An act concerning corporations,' and all amendments thereof, for the purpose of accepting and executing trusts, and any corporation now or hereafter authorized by law to accept or execute trusts may be appointed assignee or trustee by deed, and executor, guardian or trustee by will, and such appointment shall be of like force as in case of appointment of a natural person."

1108 Section 6 provides: "Each company, before accepting any such appointment or deposit, shall deposit with the auditor of public accounts for the benefit of the creditors of said company, the sum of $200,000.00 in stocks of the United States, or municipal bonds of this State, or in mortgages on improved and productive real estate in this State, being first liens thereon, and the real estate being worth at least twice the amount loaned thereon," etc. (Session Laws of Ill. of 1889, p. 99.) Section 8 of the original act provides as follows: "It shall not be lawful for any such company to accept any trust or deposit as hereinbefore provided, after the passage of this act, without first procuring from the auditor of public accounts a certificate of authority, stating that such company has complied with the requirements of this act in respect to such deposit." (Sess. Laws of Ill. of 1887, p. 145.)

The act of 1877, and the amendments to it made in 1889, refer to corporations organized under the laws of Illinois. But section 26 of the act of July 1, 1872, concerning corporations, provides as follows: "Foreign corporations, and the officers and agents thereof, doing business in this State, shall be subjected to all the liabilities,

restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers. And no foreign or domestic corporation established or maintained in any way for the pecuniary profit of its stockholders or members, shall purchase or hold real estate in this State, except as provided for in this act." (2 Starr & Cur. Stat., p. 619.) The appellant, The Farmers' Loan and Trust Company, is a corporation, organized under the laws of the State of New York for the purpose of accepting trusts and for other purposes. The act of 1887, as amended in 1889, regulating trusts, is made, by section 26 of the general corporation act, to apply to foreign, as well as domestic corporations, which come within the terms of its provisions. So far as appellant stands related to the act of 1887, as amended in 1889, its position is not different from that of a domestic corporation. The inquiry then arises, whether the appointment of the appellant as trustee under the trust deed, sought to be foreclosed by the bill herein, comes within the requirement of section 6 of said act of 1887, as amended in 1889. It is con-
1109 ceded that the appellant has never complied with said section 6 in the matter of depositing with the auditor of public accounts the sum of $200,000.00 in stocks, or bonds, or mortgages, as specified in said section.

It is said, that the taking of a mortgage by a corporation to secure a debt to it is not within the prohibition of the statute, and that, as a trust deed is the same as a mortgage, a trust under a trust deed is not within the purview of the statute. The rule, however, that the statute does not apply to a mortgage or trust deed which is a mere security for a debt, includes only such mortgages or trust deeds as contain no special powers involving active trusts. The trust instrument, however, in the present case imposes trust duties of an active character. This will readily appear by reference to the trust deed, executed by the railroad company to the appellant and the American Trust and Savings bank.

By the terms of the trust deed the trustees are required to certify the bonds to be issued, and to superintend their sale and application. Such action by the trustees under the mortgage or trust deed necessarily precedes the sale of the bonds to be issued, and the incurring of the indebtedness evidenced thereby. Interest does not commence to run, nor are payments to be made, until such certification takes place. It cannot be said, therefore, that the trust deed secures any indebtedness to the trustees, or any indebtedness actually existing to those represented by the trustees at the time of the execution of the trust deed. By the terms thereof the trustees are to certify and deliver 6,500 bonds, amounting in the aggregate to $6,500,000.00, to be first issued. The bonds are to be issued under the supervision of the trustees as follows: 1,000 to retire $12 of the six per cent. bonds of the Lake Street Elevated Railway Company—the old company. These bonds are to be reserved in the possession of the trustees and delivered only upon the retirement and canceling of the old bonds. That is to say, whenever any of said six per cent. bonds outstanding are paid or retired they are to be canceled, and the

trustees are to certify and deliver to the railroad company, or its order, a proportionate number of the 1,000 thereby secured and reserved; 5,150 of the bonds are to be used in the acquisition of a right of way and construction upon a designated route; 350 bonds are to be used for the lawful purposes of
1110 the company in the discretion of the directors. The 5,500 bonds last mentioned are to be certified and delivered by the trustees. Additional bonds are authorized as follows: 850 bonds for each additional mile of double-track road fully equipped for building the same; for paying claims for damages from operation or construction; for procuring right of way; for paying interest on its bonds during the first two years of its operation; 500 bonds for each bridge built over the Chicago river. The bonds in addition to the 6,500 bonds are only to be issued by resolution or order of the board of directors of the railroad company, and the certificates of the president or vice-president and chief engineer of the railroad as to the existence of the facts, necessitating the issue of said additional bonds, together with certified copies of the resolution or order of the board of directors, are to be furnished to the trustee or trustees, and written orders, copies, resolutions and certificates are made sufficient and conclusive evidence to the trustees to a statement therein contained, and are to protect them in respect to a certification and delivery of any of said bonds thereunder. To assure the performance of these provisions, the trust deed provides as follows: "The said trustees, if they deem proper to do so, may appoint an agent of known integrity and business capacity, with full power to dismiss him and appoint another in his stead at pleasure, who shall have the right to attend all meetings of the board of directors, have free access to, and from time to time examine, all books of account of the party of the first part, (the railroad company) appertaining to the application and expenditure of said proceeds of the sale of all of said bonds issued in excess of said 6,500 bonds, and shall make full report thereof to the trustees every three months, and as much oftener as they may from time to time require for the information of the bondholders under this mortgage, and the railroad company shall pay said agent a reasonable compensation for his services during the time of the construction of said railroad, for which additional bonds are desired as aforesaid, not to exceed, however, $1,000.00 per annum." The trust deed further provides, that, if default shall be made in the payment of the interest when the same becomes due when demanded, whether the same shall have continued for
1111 the period of six months or not, the trustee may, upon request of the holders of a majority in interest of the bonds then outstanding, enter into and take full possession of said railroad, and of all property thereby mortgaged, and hold, use, manage, maintain and operate the same and appoint such agents and managers as the trustees may see fit; collect and receive all revenues arising from such management and apply the same to the expenses of the trustees in the performance of the trust. The power of entering may be exercised as often as occasion may arise in the judgment of the trustees pending the trust, and they may continue to exercise

the power as they may deem expedient, until the holders of a majority shall otherwise request.

The trust instrument further provides, that the trustees shall permit such necessary changes to be made in the line of the railroad, as may in their judgment be deemed advisable and advantageous. Insurance is to be effected satisfactory to the trustees, and policies are to be delivered to and kept by the trustees and to be made payable to them or to their successors. The mortgagor is to be allowed to sell parts of the mortgaged property upon consent of the trustees, who may release such property. The instrument provides, however, that no portion of the main line or branches of the railroad or any part of the principal depots, stations or terminal facilities or other property, which in the judgment of the trustees may be essential to the due operation of the road, shall be released, unless replaced by property, which, in the judgment of the trustees, is of equal value and benefit to the efficient operation of the road.

Section 1 of the act of 1887, as amended in 1889, provides, that any corporation, authorized by law to accept or execute trusts, may be appointed trustee by deed. The charter of the appellant authorized it to accept and execute trusts, and it was appointed trustee by the deed now under consideration for the purpose of performing the active duties hereinbefore specified. In *Stevens v. Pratt*, 101 Ill., 206, it was held, that the purpose of section 26 of the general incorporation act, as above quoted, was to produce uniformity in the powers, liabilities, duties and restrictions of foreign and domestic corporations of like character and bring them all under the influence of the same law. In *Pennsylvania Ins. Co. v. Bauerle*, 143 Ill., 459, it was held that, under a devise to the Pennsylvania
1112 Company, and to certain other parties as trustees, the Pennsylvania company had no power to act in this State, as such trustee, without compliance with the statute in question, which requires the deposit of $200,000.00 in stocks or other securities, etc. The facts in the case at bar bring it within the doctrine of the case of *Pennsylvania Ins. Co. v. Bauerle*, *supra*.

It is said, however, that section 26 of the general incorporation act refers only to foreign corporations "doing business in this State," and that the appellant was not doing business in this State. We do not think that the evidence bears out this contention.

In *Female Academy v. Sullivan*, 116 Ill., 375, it was held that receiving lands in this State by devise, and asserting ownership over them in this State, was a sufficient doing of business in this State to bring a foreign corporation within the purview of the language of said section 26. So, also, in *Pennsylvania Ins. Co. v. Bauerle*, *supra*, it was held that, where the Pennsylvania Company, a foreign corporation, received land adjoining Chicago by devise, with power to sell and dispose of the same, and to lease it and collect the rents therefrom, and asserted in this State the ownership of said land, and assumed to sell and convey it, and brought suits in the courts of this State in respect to said lands and such alleged ownership, and for the enforcement of contracts in regard to the same, such com-

pany must be held to be doing business in this State within the meaning of said section.

In the present case the trustees, under the deed of trust executed by the Lake Street Elevated Railroad Company, certified and delivered 7,574 bonds of $1,000.00 each. From time to time in 1894 and 1895 the appellant rendered and mailed to the railroad company bills for certifying bonds and accepting the deed of trust, and for services in the matter of the trust deed, and for receiving subscriptions, etc., which bills were received and paid by the railroad company. The trustees exercised constant supervision over the application of the bonds as issued. Correspondence was carried on between the railroad company and the appellant in reference to questions arising in regard to the issuance and delivery of bonds and in regard to releases and accounts. On August 7, 1894, the appellant appointed an agent under the trust deed, who did a large amount of business in behalf of the appellant in
1113 Chicago, as such agent. This appointment was ratified and accepted by the railroad company by resolution of its board of directors. The agent accepted the agency and frequently examined the books of the mortgagor and looked after the issuance and application of the several lots of authorized bonds. He made reports as agent to the appellant and to the American Trust and Savings bank. He gave advice in reference to the questions in dispute which arose between the appellant and the railroad company from time to time. From these and other facts appearing in the record, which it is not necessary here to specify, it is manifest that the appellant was doing business in the State of Illinois within the meaning of said section 26.

We are of the opinion, that the court below did not err in decreeing that the appellant company should be removed as trustee upon the ground of its non-compliance with section 6 of the act of 1887, as amended in 1889, regulating trust companies. It is unnecessary to consider any of the other grounds mentioned, as justifying the act of the court below in removing said trustee.

Third. It is further contended on the part of the appellant, that the court below erred in entering the decree appealed from without requiring all the bondholders to be made parties to the suit. We think that, under the circumstances of this case, this contention is without force.

It is true, as a general rule, that all parties interested in the subject-matter of the suit should be made parties, and that, when foreclosure is sought of a mortgage or deed of trust, the *cestuis que trustent*, as well as the trustee, should be made parties, but there are two well-established exceptions to this rule. The first is, that, where the absent parties are properly represented, it is sufficient to make such representatives parties to the suit. In *Hale v. Hale*, 146 Ill., 257, we said: "When it appears that a particular party, though not before the court in person, is so far represented by others that his interests receive actual and efficient protection, the decree may be held to be binding upon him." Jones, on Corporate Bonds and Mortgages, (sec. 398) says: "A trustee for bondholders represents

their interests, and, when made a party to a suit affecting their interests, they are as much bound by the decree rendered in the suit as if they were individually made parties to the suit."

1114 Another exception to the rule is, that, where the beneficiaries are very numerous, so that the delay and expenses of bringing them in becomes oppressive and burdensome, they will not be deemed necessary parties, where the trustee or trustees representing them are made parties. In *Chicago, etc., Land Co. v. Peck*, 112 Ill., 408, we said (p. 435): "Objection is taken that there were other necessary parties not made parties to the several bills—that all the *cestuis que trust*, to wit: the bondholders under the Jewett trust deed, should have been made parties by name. The general rule is, that all persons interested in the subject-matter of the suit are to be made parties, and that the *cestuis que trust*, as well as the trustee, should be made parties to a foreclosure proceeding, but there is an established exception to this rule where the beneficiaries are very numerous, and certain parties to the suit are entitled to be deemed their full representatives. It has been laid down by Lord Redesdale as a general rule, that where any persons are made trustees for the payment of debts and legacies, they may sustain a suit, either as plaintiffs or as defendants, without bringing before the court the creditors or legatees for whom they are trustees, which in many cases would be impossible. Indeed, the impracticability of making the other persons parties would seem of itself a sufficient ground for dispensing with them. (Story's Eq. Pl., sec. 150.) In *Van Vechten v. Terry*, 2 Johns. Ch., 197, where a demurrer was filed to a bill brought by trustees without making the *cestuis que trust*, two hundred and fifty in number, parties, Chancellor Kent, in overruling the demurrer, said: 'The trustees are sufficient for the purpose of this bill, which is for a sale of the pledge. It would be intolerably oppressive and burdensome to bring in all the *cestuis que trust*. The delay and the expense of such a proceeding would be a reflection on the justice of the court. This is one of those cases in which the general rule cannot and need not be enforced, for the trustees sufficiently represent all the interests concerned; they were selected by the association for that purpose, and we need not look beyond them.' (And see *Shaw et al. v. N. C. R. Co. et al.*, 5 Gray, 162; Story's Eq. Pl., secs. 142, 216, 217.) We regard the present as a clear case within the exception to the general rule of equity pleading, that all persons interested in the subject-matter of the suit must be made parties to the bill."

1115 In *St. Louis and Peoria Railroad Co. v. Kerr*, 153 Ill., 182, which was a suit to enforce a lien against a railroad company, and where The Central Trust Company of New York was made a defendant, it was insisted that the court was without jurisdiction to render a decree, because certain bondholders were not made parties defendant, but we there said (p. 196): "It is a general rule in chancery, that all persons interested in the subject-matter of the suit should be made parties, and that, in the case of foreclosure of a deed of trust, the *cestuis que trust*, as well as the trustee, should be made parties. But where the beneficiaries are very

numerous, and they are represented by the trustee, and the bonds secured by the deed of trust are transferable by delivery only, they are not necessary parties. * * * The trust company assumed to act for the bondholders, and, if it desired them to be made parties, it was its duty to then have disclosed their names, and made the request to the circuit court. Not having done so, the presumption is that it had authority to act."

Applying the rules thus laid down to the facts of the present case, we find that the bondholders who were not made parties to the suit in person, are properly represented, so as to insure a protection of their interests. The two trustees in the trust deed, now under consideration, to wit, the appellant, The Farmers' Loan and Trust Company, and the appellee, The American Trust and Savings Bank, are parties defendant to the suit. They represent the interests of all the absent bondholders in a general way. It is to be remembered, that, by the terms of the trust deed in this case, the trustees are authorized to foreclose the mortgage or trust deed. It is also provided in the trust deed, that every holder of the bonds thereby secured accepts the same, subject to the express understanding and agreement that every right of action, whether at law or in equity, under the trust deed, is vested exclusively in the trustees; and it is further therein provided that, under no circumstances, shall the holder of any bonds or coupons, or any part of such holders, have any right to institute any action at law upon any coupon or coupons or otherwise, or any suit or proceedings in equity or otherwise, for the purpose of enforcing payment, etc., or to foreclose said mortgage, except in case of refusal by the trustees to perform the duty imposed on them. In addition to this, it is conceded that, of the 7,574 bonds issued, the appellee, The Northern Trust Company, one
1116 of the defendants below, is the holder of 6,594 of said bonds.

The Northern Trust Company thus appears in the suit as the representative of a large majority of the bondholders. It also appears clearly from the evidence, that one Ziegler and his associates, holding 610 of the bonds, are represented by the appellant, The Farmers' Loan and Trust Company, and by the counsel appearing for appellant in this case. As to the remaining 250 of the bondholders, they are represented by the trustees in the trust deed, who were defendants in the court below. Their number corresponds exactly with the number of the *cestuis que trustent*, to wit, 250, named in *Van Vechten v. Terry*, 2 Johns. Ch., 197, quoted in *Land Co. v. Peck*, *supra*, as to which number it was there said, that the trustees were sufficient representatives thereof for the purposes of a bill, asking a sale of the pledge or mortgaged property.

Some other points are urged against the correctness of the decree entered by the court below, but they are unimportant, and we do not deem it necessary to enter into a discussion of them. What is said above sufficiently disposes of the material opposition made by counsel to the decree of the trial court.

The judgment of the appellate court and the decree of the superior court are affirmed.

Judgment affirmed.

1117 STATE OF ILLINOIS, } ss:
Supreme Court, }

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause, of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, Aug. 2, 1898.

[Seal Supreme Court of Illinois.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

1118 And afterwards, to wit, on the second day of August, A. D. 1898, there was filed in the office of the clerk of said court a certain petition for writ of error from the United States Supreme Court to the supreme court of the State of Illinois, together with the order allowing the same, and bond; which said petition, order, and bond are in the words and figures following, viz.:

1119 In the Supreme Court of the United States.

THE FARMERS' LOAN & TRUST COMPANY, Plaintiff in Error, *vs.* THE LAKE STREET ELEVATED RAILROAD COMPANY, The American Trust & Savings Bank, and The Northern Trust Company, Defendants in Error.	Writ of Error to the Supreme Court of Illinois.

To the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States:

And now comes the Farmers' Loan and Trust Company, by Herbert B. Turner and William Burry, its attorneys, and shows to the court that in the record and proceedings and also in the rendition of the judgment in a suit lately pending in the supreme court of Illinois between The Farmers' Loan & Trust Company, appellant, and The Lake Street Elevated Railroad Company, The American Trust & Savings Bank, and The Northern Trust Company, as appellees, which supreme court of Illinois is the highest court of law or equity in said State in which a decision could be had in said suit, and in which a final judgment was rendered against said The Farmers' Loan & Trust Company on the 18th day of June, A. D. 1898, in said suit, a record of which suit is now here presented, it appears that certain rights and privileges were claimed under the Constitution and statutes of the United States by said The Farmers'

Loan & Trust Company, and said supreme court of Illinois erroneously decided against said rights and privileges of said plaintiff in error, as is more particularly set out in the assignments of error herewith presented and hereto attached; from all of which
1120 it appears in the record and proceedings in said suit manifest error has happened, to the great damage of said The Farmers' Loan & Trust Company.

Therefore the said The Farmers' Loan & Trust Company prays for the allowance of a writ of error to said supreme court of the State of Illinois and for such other process as may cause said suit to be removed into the Supreme Court of the United States, and any error contained in the record thereof to be there corrected.

HERBERT B. TURNER,
WILLIAM BURRY,
Attorneys for said Plaintiff in Error, The Farmers' Loan & Trust Company.

The writ of error above prayed for is hereby allowed, to operate as a supersedeas upon the plaintiff in error filing a bond, as required by law, in the penal sum of five thousand dollars ($5,000).

H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

July 7th, 1898.

1121 Know all men by these presents that we, The Farmers' Loan and Trust Company, a body corporate of the State of New York, as principal, and Herbert B. Turner, of Englewood, New Jersey, as surety, are held and firmly bound unto the Lake Street Elevated Railroad Company, the American Trust and Savings Bank, and the Northern Trust Company, and to each of them, respectively, and their respective successors and assigns, in the full and just sum of five thousand dollars ($5,000), to be paid to the said The Lake Street Elevated Railroad Company, the American Trust and Savings Bank, and the Northern Trust Company, and to each of them respectively, and to their respective successors and assigns; to which payment, well and truly to be made, we, the said The Farmers' Loan and Trust Company, for itself, its successors, and assigns, and the said Herbert B. Turner, for himself, his heirs, executors, and administrators, bind ourselves, jointly and severally, by these presents.

Executed and dated this 7th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a supreme court of the State of Illinois, within and for the northern grand division thereof, in a suit depending in said court between the said The Farmers' Loan and Trust Company, as appellant therein, and the said The Lake Street Elevated Railroad Company, The American Trust and Savings Bank, and The Northern Trust Company, as appellees therein, a judgment was rendered against the said The Farmers' Loan and Trust Company, and the said The Farmers' Loan and Trust Company having obtained
1122 a writ of error and filed a copy thereof in the clerk's office of said court to reverse said judgment in the aforesaid suit on

a citation directed to the said The Lake Street Elevated Railroad Company, the said The American Trust and Savings Bank, and the said The Northern Trust Company, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said The Farmers' Loan and Trust Company shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its suit, then this obligation shall be void; otherwise to remain in full force and effect.

[CORPORATE SEAL.] THE FARMERS' LOAN AND TRUST COMPANY,

By E. S. MARSTON, *President.*

Attest: SAM. SLOANE, *Secretary.*

HERBERT B. TURNER. [SEAL.]

Approved:

H. B. BROWN,

Associate Justice, Supreme Court U. S.

July 7, 1898.

1123 In the Supreme Court of the United States.

THE FARMERS' LOAN AND TRUST COMPANY, Plaintiff in Error, *vs.* THE LAKE STREET ELEVATED RAILROAD COMPANY, The American Trust and Savings Bank, and The Northern Trust Company, Defendants in Error.	Writ of Error to Supreme Court of Illinois.

Assignment of Errors.

And now comes the plaintiff in error, The Farmers' Loan and Trust Company, by Herbert B. Turner and William Burry, its attorneys, this 7th day of July, A. D. 1898, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

I.

That said supreme court of Illinois erred in rendering its said judgment herein in this, to wit: That it appears in and by the record and proceedings aforesaid that said plaintiff in error had and claimed in the superior court of Cook county, Illinois, and in the appellate court in and for the first district of Illinois, and in said supreme court of Illinois, the right and privilege, under the Constitution and statutes of the United States, to remove this case to the circuit court of the United States in and for the northern district of Illinois, northern division thereof, and that in and by its said judgment the supreme court of Illinois erroneously decided against said right and privilege of said plaintiff in error.

II.

That said supreme court of Illinois erred in rendering its said judgment in this, to wit: That it appears in and by the
1124 record and proceedings aforesaid that the plaintiff in error claimed in said superior court and in said appellate court and in said supreme court of Illinois the right and privilege, under the Constitution and statutes of the United States, to remove this cause to the circuit court of the United States for the northern district of Illinois, northern division thereof, and duly filed its petition and bond for such removal, and that in and by its said judgment said supreme court of Illinois erroneously decided against the said right and privilege of the plaintiff in error, and erroneously held that said bond for removal was not in compliance with the statutes of the United States providing for the giving of the same.

III.

That said supreme court of Illinois erred in holding that the bond (set out in the transcript of record herein) for removal of this cause to said circuit court of the United States was not made in compliance with the statutes of the United States providing for the giving of same.

IV.

That the supreme court of Illinois erred in rendering its said judgment in this, to wit: That it appears in and by the record and proceeding aforesaid that the order entered herein by said superior court on the 3rd day of February, A. D. 1896, and set out in the transcript of record herein denied the plaintiff in error the right and privilege, under the Constitution and statutes of the United States, to remove this cause to said circuit court of the United States, and that said order was erroneous, and that said supreme
1125 court of Illinois erred in not reversing, because of said erroneous order of said superior court, the judgment herein of said appellate court of Illinois in and for the first district of Illinois, which affirmed all the orders and decrees entered herein by said superior court, and in deciding against said right and privilege of said plaintiff in error.

V.

That said supreme court of Illinois erred in not holding that said superior court erred in ordering in and by its said order entered on the third day of February, A. D. 1896, that the motion of the plaintiff in error, based on its petition and bond, for removal of this cause to the said circuit court of the United States, be denied, and in not reversing the cause on account of said error of said superior court.

VI.

That said supreme court of Illinois erred in not reversing the decree of said superior court, because it refused to accept the petition and bond filed herein by plaintiff in error for removal of this

cause to the said circuit court of the United States, and to order the removal of the cause to said circuit court of the United States, and to proceed no further therein.

VII.

That said supreme court of Illinois erred in not reversing the action of said superior court in retaining jurisdiction of this cause after the plaintiff in error filed in and presented to said superior court its said petition and bond for removal of this cause to said circuit court of the United States.

1126 VIII.

That said supreme court of Illinois erred in not reversing the action of said superior court of Cook county in taking proceedings in said cause after the plaintiff in error filed in and presented to said superior court its said petition and bond for removal of this cause to said circuit court of the United States.

IX.

That said supreme court of Illinois erred in not reversing the action of said superior court of Cook county in entering herein on the fourth day of June, A. D. 1896, the decree of that date, set out in the transcript of record herein, after the plaintiff in error had filed in and presented to said superior court its said petition and bond for removal to said circuit court of the United States.

X.

That said supreme court of Illinois erred in not reversing the action of said superior court in entering its order of the eighteenth day of March, A. D. 1896, set forth in the transcript herein, after the plaintiff in error had filed in and presented to said superior court its said petition and bond for removal of the cause to said circuit court of the United States.

XI.

That said supreme court of Illinois erred in not reversing the action of said superior court of Cook county in finding in and by said order entered in said superior court on said eighteenth day of March, A. D. 1896, that it had jurisdiction of the parties and subject-matter of this cause after plaintiff in error had pre-
1127 sented to and filed in said superior court its said petition and bond for removal of the cause to said circuit court of the United States.

XII.

That said supreme court of Illinois erred in not holding that said superior court of Cook county erred in finding and adjudicating in and by said decree (set out in the transcript of record herein) entered in said superior court on the fourth day of June, A. D. 1896, and after the presentation to and filing in said superior court of said petition and bond for removal of the cause to said circuit court of

the United States by the plaintiff in error, that it, said superior court of Cook county, had jurisdiction of the cause and of all the parties hereto, and in not reversing the cause on account of said error of said superior court.

XIII.

That said supreme court of Illinois erred in rendering its said judgment herein in this, to wit, that it appears in and by the records and proceedings aforesaid that said plaintiff in error duly filed in said superior court in this cause its bond and petition for removal of this cause to the said circuit court of the United States and presented the same to said superior court; that that court thereupon erroneously denied said petition; that thereupon plaintiff in error obtained an order from said circuit court of the United States directing the docketing of this cause in said United States circuit court; that thereupon plaintiff in error filed a transcript of the record of this cause from said superior court in the clerk's office of said United States circuit court in accordance with said order so obtained; that thereupon and before taking any further steps in said superior court all of said defendants in error duly entered their general appearance in this cause in said circuit court of the
1128 United States, and there made their several motions to remand this cause to said superior court, and pressed their said motions for hearing, and argued the same fully before said United States circuit court; that thereupon said circuit court of the United States overruled said motions to remand and held that this cause was properly removed; that said adjudication so obtained upon the motion and insistence of said defendants in error thereupon was conclusive, until duly set aside and reversed, of the said questions of removal and jurisdiction, and that said supreme court of Illinois erred in not reversing the action of said superior court in thereafter exercising jurisdiction in this cause and proceeding with this cause, and in not holding that the said adjudication of said United States circuit court was conclusive, until duly set aside or reversed, of said questions of jurisdiction and remanding.

XIV.

That said supreme court of Illinois erred in not holding that said superior court erred in proceeding in this cause and in entering in said superior court said decree entered therein on the fourth day of June, A. D. 1896, after this cause was docketed in said circuit court of the United States in and for the northern district of Illinois, northern division thereof, and after said The Lake Street Elevated Railroad Company and the American Trust and Savings bank and the Northern Trust Company, respectively, moved to remand this cause to said superior court, and after said circuit court of the United States entered the order denying said motions to remand, and the other proceedings in said circuit court of the United States shown in evidence on the hearing of this cause in said superior

court, and in not reversing the cause on account of said error of said superior court.

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XV.

That said supreme court of Illinois erred in rendering its said judgment herein in this, to wit, that it appears in and by the record and proceedings aforesaid that said circuit court of the United States adjudicated the question of its jurisdiction over this cause by entering the orders (set out in the transcript of record herein) docketing this cause in said circuit court of the United States and overruling the motions to remand the cause to said superior court, and that such adjudication was conclusive until duly set aside or reversed on the said question of jurisdiction, and that said supreme court of Illinois erred in not holding that said superior court erred in proceeding with the cause after such adjudication had been made by said circuit court of the United States, and in not deciding that said adjudication was conclusive until duly set aside or reversed on said question of jurisdiction, and in not reversing the cause on account of said error of said superior court.

XVI.

That said supreme court of Illinois erred in rendering the said judgment in this, to wit, that it appears in and by the record and proceedings aforesaid that the plaintiff in error had filed a bill to foreclose the mortgage trust deed dated April 7th, 1893 (set out in the transcript of record herein), in the circuit court of the United States in and for the northern district of Illinois, northern division thereof, and said circuit court of the United States had acquired full jurisdiction thereof prior to the commencement of this suit in said superior court of Cook county, Illinois, and that therefore

1130 said supreme court of Illinois erred in not holding that said superior court erred in ordering, adjudging, and decreeing in and by the said decree entered in said superior court on said fourth day of June, A. D. 1896, as follows, to wit:

"And it is further ordered, adjudged, and decreed by the court that the said defendant, The Farmers' Loan and Trust Company, and its attorneys, solicitors, officers, agents, and servants, and each and every of them, be, and they are hereby, perpetually enjoined and restrained from taking any proceedings or bringing or prosecuting any suit or suits to foreclose said mortgage or trust deed from said complainant to said American Trust and Savings bank and said Farmers' Loan and Trust Company," and in not reversing the cause on account of said error of said superior court.

XVII.

That said supreme court of Illinois erred in rendering the said judgment in this, to wit, that it appears in and by the record and proceedings aforesaid that prior to the commencement of this suit

in said superior court the plaintiff in error had filed a bill of foreclosure of the mortgage trust deed dated April 7th, 1893 (set out in the transcript of record herein), in the said circuit court of the United States, and said circuit court of the United States had acquired full jurisdiction thereof, and that therefore said supreme court of Illinois erred in not holding that said superior court erred in ordering, adjudging, and decreeing in and by said decree entered in said superior court on said 4th day of June, A. D. 1896, that the plaintiff in error be perpetually enjoined and restrained from "acting in any manner whatsoever under and by virtue of the terms, provisions, and conditions of said mortgage or deed of
1131 trust so made, executed, and delivered by the said complainant, The Lake Street Elevated Company, to the said defendant, The American Trust and Savings Bank, as trustee, and the said defendant, The Farmers' Loan and Trust Company, as cotrustee," and in not reversing the cause on account of said error of said superior court.

XVIII.

That said supreme court of Illinois erred in rendering the said judgment in this, to wit, that from the record in this cause it appears that the plaintiff in error filed a bill to foreclose the mortgage trust deed dated April 7th, 1893 (set out in the transcript of record herein), and that said circuit court of the United States acquired full jurisdiction of said foreclosure suit and of said mortgaged property and of the enforcement of said mortgage trust deed prior to the commencement of this cause; that all said defendants in error were made parties to said foreclosure suit and voluntarily appeared therein and answered said foreclosure bill; that in this cause said superior court entered a decree, in and by which, among other things, it perpetually enjoined and restrained plaintiff in error from proceeding with or prosecuting said foreclosure suit, and that thereby the said superior court enjoined or attempted to enjoin a proceeding theretofore pending in said United States circuit court, contrary to the laws and statutes of the United States of America, and therefore the said supreme court of Illinois erred in not reversing said decree of said superior court so enjoining further prosecution to said foreclosure cause.

XIX.

1132 That said supreme court of Illinois erred in rendering its said judgment herein in this, to wit, that it appears in and by the record and proceedings aforesaid that said plaintiff in error had and claimed in said superior court of Cook county, Illinois, and in said appellate court in and for the first district of Illinois, and in said supreme court of Illinois, rights and privileges under the Constitution and statutes of the United States, and that in and by its said judgment the supreme court of Illinois erroneously decided against said rights and privileges of said plaintiff in error.

Wherefore the said plaintiff in error, The Farmers' Loan and

Trust Company, prays that the judgment of said supreme court of Illinois be reversed.

HERBERT B. TURNER,
WILLIAM BURRY,
Attorneys for said Plaintiff in Error.

Endorsed on cover: Case No. 16,939. Illinois supreme court. Term No., 108. The Farmers' Loan and Trust Company, plaintiff in error, *vs.* The Lake Street Elevated Railroad Company, The American Trust and Savings Bank, and The Northern Trust Company. Filed August 10th, 1898.